416.

SUPREME COURT OF THE UNITED STATES.

No. 61.

ROBERT TAYLOR, PLAINTIFF IN ERROR,

vs.

NATHAN T. CARRYL, WHO SURVIVED WM. J. WARD.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA IN THE EASTERN DISTRICT.

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GIDEON, Print.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the Judges of the [SEAL.] Supreme Court of the State of Pennsylvania, in the eastern district, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Nathan T. Carryl, who survived William J. Ward, plaintiff, and Robert Taylor, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Robert Taylor, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the 30th day of October, in the year of our Lord one thousand eight hundred and fifty-five.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by

R. C. GRIER,
Associate Just. S. C. U. S.

[REC. LXI, D. T., 1856.]—1

To the honorable the Judges of the Supreme Court of the United States.

The record and proceedings in the within writ mentioned and referred to, with all things concerning the same, are certified and sent with this writ, as within commanded.

In witness whereof, I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania for the eastern district, at Philadelphia, this nineteenth day of December, A. D. 1855.

[SEAL.]

J. F. BELSTERLING,
For ROBERT TYLER, *Proth'y*.

Citation.

The United States of America, to Nathan T. Carryl, who survived William J. Ward, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, in the eastern district, wherein Robert Taylor is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert C. Grier, one of the associate judges of the Supreme Court of the United States, this fifth day of November, in the year of our Lord one thousand eight hundred and fifty-five.

R. C. GRIER,
Assoc. Just. S. C. U. S.

On this 9th day of November, A. D. 1855, personally appeared Thomas L. George, before me, the subscriber, a United States commissioner for the southern district of New York, and being duly sworn saith, that he delivered a true copy of the within citation to Nathan T. Carryl, the def't within named, on the 8th day of November, A. D. 1855.

R. E. STILWELL,
U. S. Com'r.

Know all men by these presents, that we, Robert Taylor, James L. Taylor, and Hugh Cassidy, are held and firmly bound unto Nathan T. Carryl, who survived William J. Ward, in the full and just sum of five hundred dollars, to be paid to the said Nathan T. Carryl, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this day of , in the year of our Lord one thousand eight hundred and fifty-five.

Whereas lately at a supreme court of the State of Pennsylvania, in the eastern district, in a suit pending in said court, between the said Nathan T. Carryl, who survived William J. Ward, plaintiff, and Robert Taylor, defendant, judgment was rendered against the said Robert Taylor, and the said Robert Taylor having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Nathan T. Carryl, who survived William J. Ward, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said Robert Taylor shall prosecute said writ of error to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

ROBERT TAYLOR, [SEAL.]
JAMES L. TAYLOR, [SEAL.]
HUGH CASSIDY, [SEAL.]

Sealed and delivered in presence of—
THO. POWELL,
GEO. L. TAYLOR.

Approved by
R. C. GRIER,
Asso. Just. S. C. U. S.

ROBERT TAYLOR, plaintiff in error, who was defendant below,
vs.
NATHAN T. CARRYL, who survived William J. Ward.

In this case the construction of the clause of the Constitution of the United States, that the judicial power shall extend to all cases of admiralty and maritime jurisdiction, was drawn in question, and the construction of the statute of the United States, that the district courts shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction; and that the decision was against the title specially set up and claimed under the said clause of the Constitution and statute; and that the validity of an authority exercised under the State of Pennsylvania was drawn in question on the ground of its being repugnant to the Constitution and statute of the United States aforesaid; and that the decision was in favor of such its validity.

JOHN CADWALADER.

Be it remembered, that in the term of March, in the year of our Lord one thousand eight hundred and forty-eight, came William J. Ward and Nathan T. Carryl, trading as Ward & Company, into the supreme court for the eastern district of Pennsylvania, and impleaded Robert Taylor in a certain plea, in which the record and process are in the words following, that is to say:

Writ of Replevin.

PENNSYLVANIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania, to the Sheriff of Philadelphia county, greeting:

We command you that you cause to be replevied and delivered unto William J. Ward and Nathan T. Carryl, trading as Ward & Co., if they make you secure in prosecuting their claim to one barque or vessel called the "Royal Saxon," her tackle, apparel, boats, and furniture, value $6,000, which Robert Taylor took and unjustly detains against sureties and safe pledges, and that you put the said Robert Taylor by sureties and safe pledges, so that he be and appear before the justices of our supreme court, at our same court, to be held at Philadelphia, in and for the eastern district of the State of Pennsylvania, on the third Monday of March next, to answer the said William J. Ward and Nathan T. Carryl, trading as Ward & Co., of a plea, wherefore he took the said barque or vessel called the "Royal Saxon," her tackle, apparel, boats, and furniture, value $6,000, the property of the said William J. Ward and Nathan T. Carryl, trading, &c., and the same unjustly detains against sureties and safe pledges, &c.; and have you then there this writ.

Witness the honorable John Bannister Gibson, esquire, doctor of laws, chief justice of our said court at Philadelphia, the 24th day of February, in the year of our Lord one thousand eight hundred and forty-eight, and of the commonwealth the seventy-second.

A. M. COHEN,
For J. S. COHEN,
Prothonotary, S. C. E. D.

(Endorsed:)

42.—March term, 1848.—Supreme court.—William J. Ward and Nathan T. Carryl, trading as Ward & Co., vs. Robert Taylor.—Replevin, value $6,000.—Returnable the third Monday of March, 1848.—Bail $12,000.—W. W. Haly.

To which said writ the said sheriff, on the day on which he was therein commanded to return the same before the said judges, returned, that by virtue of the said writ to him directed, he had replevied the said barque or vessel, her tackle, apparel, boats, and furniture, as he was therein commanded, and had delivered the same to the said plaintiffs, and had summoned the said defendant to be and appear on the same day before the said justices, according to the precept of the said writ.

And thereupon the said Nathan T. Carryl, by W. W. Haly, his attorney, comes and gives the court here to understand and be informed, that since the issuing out of the said writ of replevin the said William J. Ward died, which the said Robert Taylor doth not deny, but admits the same to be true.

Taylor vs. *Carryl.*

Declaration filed, Dec. 29, 1849.

In the Supreme Court for the eastern district of Pennsylvania, of March term, one thousand eight hundred and forty-eight.

PHILADELPHIA COUNTY, *ss:*

Robert Taylor was summoned to answer William J. Ward and Nathan T. Carryl, of a plea wherefore he took the chattels of the said William and Nathan, to wit, one barque or vessel called "The Royal Saxon," her tackle, apparel, and furniture, and unjustly detained the same against sureties and pledges, until, &c. And thereupon the said Nathan T. Carryl, by W. W. Haly, his attorney, comes and gives the court here to understand and be informed, that since the suing out of the writ of replevin in this case, and before this day, the said William J. Ward died, which the said Robert Taylor doth not deny, but admits the same to be true. And thereupon the said Nathan, by W. W. Haly, his attorney, complains for that the said Robert Taylor, on the twenty-third day of February, one thousand eight hundred and forty-eight, in the county of Philadelphia, and within the jurisdiction of this court, took the chattels of the said William and Nathan, to wit, one barque or vessel called "The Royal Saxon," her boats, tackle, apparel, and furniture, of great value, to wit, of the value of four thousand dollars, and unjustly detained the same gainst sureties and pledges, until, &c.

Wherefore, the said Nathan saith he is injured and hath sustained damage to the amount of two thousand dollars, and therefore he brings suit, &c.

W. W. HALY, *pro Quer.*

Pleas.

ROBERT TAYLOR
ads.
WILLIAM J. WARD & NATHAN T. CARRYL, trading as Ward & Co. } No. 42.

March Term, 1848.

And the said defendant, by Samuel Hood, his attorney, comes and defends the wrong and injury done, &c., and says that he did not take the said barque or vessel, her boats, tackle, apparel, and furniture, in the said declaration mentioned, or any part thereof, in manner and form as the said Nathan T. Carryl, who survived William J. Ward, hath above thereof complained against him; and of this he, the said defendant, puts himself on the country, &c.

And the said Nathan T. Carryl, who survived Wm. J. Ward, as to the said plea of the said defendant by him first above pleaded, and whereof he puts himself upon the country, doth the like.

And for a further plea in this behalf, the said defendant, by leave of court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said

Nathan T. Carryl, who survived William J. Ward, ought not to have or maintain his aforesaid action thereof against him, because he says that the said barque or vessel called "The Royal Saxon," her boats, tackle, apparel and furniture, in the said declaration mentioned, at the said time, when, &c., were the property of the said defendant, and not of the said Nathan T. Carryl and William J. Ward, as by the said declaration is above supposed, and this he the said defendant is ready to verify; wherefore he prays judgment, if the said Nathan T. Carryl, who survived William J. Ward, ought to have or maintain his aforesaid action thereof against him the said defendant; and he, the said defendant, also prays a return of the said barque or vessel called "The Royal Saxon," her boats, tackle, apparel and furniture, together with his costs in this behalf to be made to him, &c.

And the said Nathan T. Carryl, who survived William J. Ward, as to the said plea of the said defendant by him secondly above pleaded, saith that he, the said Nathan, by reason of anything by the said defendant in that plea above alleged, ought not to be barred, &c., or, &c., because he says that the said barque or vessel, her boats, tackle, apparel and furniture, were not the property of the said defendant in manner and form as in that plea is by him above alleged; and of this he, the said Nathan T. Carryl, puts himself upon the country, &c.

And the said defendant, as to the said replication of the said plaintiff to the said second plea, doth the like, &c.

And afterwards, to wit, at a session of said court, held at the county of Philadelphia, before the honorable George W. Woodward, one of the justices of the said court sitting at nisi prius, on Wednesday, the fifteenth day ot February, A. D. 1854, the aforesaid issue between the said parties came to be tried by a jury of the said county, for that purpose duly empannelled, namely: James Bell, John C. Davis, William Esher, Benjamin Burnell, David Evans, David Sellers, William J. Leahy, D. H. Loper, Stephen Fagan, David Maxwell, Philip Mathew, Edward Siddons; at which date came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid empannelled to try the said issues, being also called, came, and were then and there in due manner chosen and sworn or affirmed to try the said issues.

And upon the trial the counsel of the said plaintiff gave in evidence an exemplification of the record in a certain case, wherein James Magee and James Beazly, trading as Magee & Co., were plaintiffs, and Robert McIntyre and William F. McIntyre, trading as Robert and William F. McIntyre, were defendants, in the supreme court of Pennsylvania, eastern district, of December term, 1847, No. 49, (prout copy annexed, marked A.) And the said counsel of the said plaintiff offered in evidence an exemplification of the record of a certain case in the same court, of March term, 1848, No. 16, wherein Robert Bell was plaintiff, and the said Robert and William F. McIntyre were defendants. And the counsel for the said defendant thereupon objected to the admission thereof as evidence, and contended

that the same was irrelevant or defective; but the learned judge overruled the objection; whereupon the counsel for the defendant excepted, and the learned judge sealed this bill of exceptions. And the said counsel for the plaintiff then read in evidence the said exemplification of the record in Bell v. McIntyre, (prout copy, marked B.) And the said counsel for the plaintiff also read in evidence the depositions of William M. Evarts, esq., (prout copy, marked C.); and of Gabriel Johnson, (prout copy, marked D.); and Sheriff Lelar's receipt to plaintiffs, dated Feb'y, 1848, for $2800, the amount of the purchase-money of the barque "Royal Saxon," and the counsel for the plaintiff closed his case. And the counsel for the said defendant then read in evidence an exemplification of the record in a certain cause, in the district court of the United States for the eastern district of Pennsylvania, in admiralty, wherein Thomas Wall and others, mariners of the barque Royal Saxon, were libellants against the said barque or ship, and against all persons lawfully intervening, &c., (prout copy annexed, marked E.) And the said counsel for the defendant read in evidence a certain bill of sale of said barque Royal Saxon, from the marshal of the United States, &c., to defendant Robert Taylor, dated Feb. 18, 1848, (prout copy thereof, marked F.) And the said counsel for the said defendant then called Hugh Cassidy, who, being duly sworn, testified as follows:

I was in the employment of Robert Taylor, the defendant, in 1847-'8, as clerk; I recollect the Royal Saxon; she arrived in Philadelphia in October, 1847, from Londonderry, Ingleby master, and about ten seamen on board; I was frequently on board; the officers and seamen continued on board until the marshal sold her, and a few days after; from the time the marshal attached until sold by the marshal, I believe there was an officer on board; I was on board every week two or three times, may be oftener, from her arrival. There was a lock when marshal attached for violation of passenger law, but don't know if there was one when she was attached under the seamen's libel. I have knowledge of the value of vessels; have been with Mr. Taylor since 1833; a great many vessels during that time have been consigned to Mr. Taylor—some years six or seven, sometimes seventeen or eighteen in a year. The Royal Saxon was worth ten or twelve thousand dollars; she cost probably twenty thousand dollars. She was of the burthen of four hundred and forty tons, built of good timber, well finished, with her rigging, boats, &c., &c.; there were three boats, the long boat was larger than usual, and must have cost from five hundred to a thousand dollars. She was coppered, her sails were in good condition, and there was no defect in her hull. She was chartered by Mr. Taylor's correspondent in Londonderry. After the sale by the marshal, I went on board the Royal Saxon with Deputy-marshal O'Neill. O'Neill is dead. He delivered possession to Mr. Taylor; Young was on board first as watchman for Mr. Taylor; I don't know what has become of him. McCartney was also a watchman; he is dead. Wall, the first officer, was in charge until he went away with the seamen.

Cross-examined.—The mate Wall went home with the seamen after the sale. I don't know about Young. The deputy-marshal went to quarter-deck and said, I give you possession of this vessel. He said this to Mr. Taylor, jr. My impression is, the marshal had a man there off and on from attaching for the seamen. I saw his man on board—sheriff's man was there too. Do not know that Mr. Taylor bought or sold vessels; have seen vessels sold often. My knowledge is derived from this, and hearing ship-owners and masters speak of them. Mr. Taylor bought the vessel for himself. No correspondence as to sale with his correspondents. I am now a partner of Mr. Taylor; have no interest in this suit. These transactions were before I joined the partnership; the winding up of the old concern don't go into the new firm.

Re-examined.—Young, McCartney and Wall received pay from Mr. Taylor for watching. Young, two dollars; McCartney, four; and Wall, six dollars. I think sheriff's officer left when marshal gave possession, and Mr. Taylor put a man on board; saw paper nailed to mast after marshal's attachment for seamen's wages.

Cross-examined.—I knew marshal attached because I saw him there, and he delivered the vessel and sold her.

And the counsel for defendant then called Captain Michael Wyse, who being duly sworn, testified: I was on board of the barque Royal Saxon often. I have experience in the value of ships—was master of vessels twenty-four years—merchantmen. I was appointed to examine and appraise the Royal Saxon in April, 1848; appraised her at six thousand dollars; we appraised her as a foreign vessel.

Question. What was the intrinsic value of the vessel as she lay in the water?

(Objected to by plaintiff's counsel. Objection overruled and exception noted.)

If she was under the American flag she was worth eight or nine thousand dollars, and if under an English flag she would be worth

. Captain Gallagher and Mr. Lee were on board with me, and we were an hour in her lower hold. She was in good order, her masts were all sound, her boats were good, freights good in 1848–9. She should earn eight or ten thousand dollars a year clear.

Cross-examined.—The earnings of a ship are a very uncertain thing; might have lost ten thousand dollars in a year; uncertain what she might bring.

And the counsel for the defendant called Captain Silas Pedrick, who being duly affirmed, testified: Was a captain in the merchant service since 1815, but for the last seventeen years have been acting as surveyor, appointed by the United States courts at Philadelphia. Examined Royal Saxon in 1848, together with Captain Nicholson; her value was eight thousand dollars, if American registered. Captain Nicholson is dead. The Royal Saxon was in good condition.

Cross-examined.—No opinion as to her value as a foreign vessel.

Re-examined.—Witness being shown paper, says—that is the certificate we gave of her value at the time.

Cross-examined.—The examination was at Mr. Taylor's request.

Certificate dated 7 April, 1848, was read, (prout copy annexed, marked G.)

The counsel for the defendant then called James H. Horn, esq., who being duly sworn, testified: I acted as counsel for Captain Ingleby in the admiralty, filed a libel for him, and an answer to a libel by the seamen of the Royal Saxon against her; attended a sale of her by the sheriff at the Exchange, and had a notice drawn to read there; the substance of it was, that the vessel was in the hands of the United States Marshal. I told Mr. Lelar, the sheriff, that I wanted to read it; Sheriff Lelar told me he would not allow any notice to be read. I desisted.

Cross-examined.—He spoke in such a peremptory manner, I supposed he would turn me out of the room if I had persisted to read the notice. I considered the notice necessary. I did not give the notice, perhaps it was not necessary, but I thought it my duty to give notice of the condition of the vessel. It was in February, 1848. I was not the business partner of Mr. Hood; had an office with him, had been in same office with him before, and was associated with him in several cases; when so associated, the names Hood & Horn were put to papers. Captain Ingleby first spoke to me, I think, about this matter.

And the counsel for the defendant closed.

And the counsel for the plaintiff, in order to rebut the testimony on the part of the defendant, read in evidence the deposition of Robt. Soutter, (prout copy annexed, marked H.) Receipt of Samuel Hood, dated 27 January, 1849, offered in evidence on the part of the plaintiff. Objected to by defendant's counsel. Objection overruled, and receipt read. Exception by counsel for defendant noted.

The counsel for the plaintiff gave in evidence an exemplification of the record of a cause in the district court of the United States for the eastern district of Pennsylvania, (see copy of docket entries annexed, marked I.)

And the counsel for the said plaintiff called Edward Waln, esq., who testified: that he was counsel for Magee & Co. in the foreign attachment suit; directed the sheriff to remove the watchman whilst marshal had possession under the proceedings for forfeiture; saved custody fees while under marshal's pay; before the remission of the forfeiture by the United States, the watchman of sheriff was sent on board again, and as soon as I found that the marshal was to withdraw his charge, I directed the sheriff to put his man on board again. He was withdrawn and sent back before Bell's attachment. I gave instruction for this when I found the marshal was going to give up. There was an amicable arrangement with Mr. Hood as to the attachment suit of Magee v. McIntyre, in January, 1849. Mr. Hood was counsel for the McIntyres.

Cross-examined.—Mr. Hieskell acted as counsel for Bell in January, 1849. I had withdrawn before that time, and Mr. Hieskell was substituted, in Bell v. McIntyre. Plaintiff closes.

And the counsel for the defendant called Samuel Hood, who being duly sworn testified: I did not receive any of the moneys referred to in the receipt of 27 January, 1849, for Mr. Taylor, the defendant in this suit. Defendant closed.

And the counsel for the said plaintiff requested the judge to charge the jury on certain points of law, (prout copy of plaintiff's points, marked K.)

And the counsel for the defendant requested the judge to charge the jury on certain other points of law, (prout copy of defendant's points, marked L.)

And his honor the judge charged the jury, (prout charge as filed, and copy marked M.)

And the counsel for the defendant excepted to said charge, and assigned specifications of exception to said charge, (prout copy of exceptions, marked N;) and his honor the judge sealed these bills of exception. GEO. W. WOODWARD, [L. S.]

(A.)

Pleas before the honorable John Bannister Gibson, L.L. D., chief justice of the Supreme Court of Pennsylvania, and his associates, justices of the same court, at a Supreme Court of Pennsylvania, in and for the eastern district, at Philadelphia, of the term of December, 1847—No. 49.

It is thus contained:

JAMES MAGEE and JAMES BEAZLEY, trading under the firm of JAMES MAGEE & COMPANY,
vs.
ROBERT McINTIRE and WILLIAM F. McINTIRE, trading under the name of ROBERT & WILLIAM F. McINTIRE.

Sup. Court, Dec. T. 1847, for att. case—Bail $20,000.

Issue the writ and attach the ship "Royal Saxon," her tackle, apparel and furniture, and all the goods, property and effects of the defendants, or either of them, in the charge or possession of Capt. Inglesby, and summon him as garnishee.

November 3, 1847. ED. WALN, *for Pltff.*

To J. SIMON COHEN, Esq., Proth. Sup. Court, &c., &c., &c.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

The Commonwealth of Pennsylvania, to the Sheriff of Philadelphia county, greeting:

We command you that you attach Robert McIntire and William F. McIntire, trading under the name of Robert and William F. McIntire, late of your county, by all and singular their goods and chattels, lands and tenements, in whose hands or possession

[SEAL.]

soever the same may be, so that they be and appear before the justices of our supreme court of the State of Pennsylvania, at our same court, to be holden at Philadelphia, in and for the eastern district of Pennsylvania, on the second Monday of December next, to answer James Magee and James Beazley, trading under the firm of James Magee & Company, of a plea of trespass on the case, &c.

And we also command you, that you summon all persons in whose hands or possession the said goods or chattels or any of them may be attached, so that they and every of them be and appear before the said court, at the day and place aforesaid, to answer what shall be objected against them, and abide the judgment of the court therein, and have you then and there this writ.

Witness the honorable John Bannister Gibson, esquire, doctor of laws, chief justice of our said supreme court, at Philadelphia, the fourth day of November, in the year of our Lord one thousand eight hundred and forty-seven.

J. SIMON COHEN,
Pro. Sup. Court, Eastern District.

Attached November 8th, 1847, the bark Royal Saxon, as within commanded, and summoned Captain Inglesby as garnishee. So answers

HENRY LELAR, *Sheriff.*

47th.—December Term, 1847, Supreme Court.

James Magee and James Beazley, trading under the firm of James Magee & Co., vs. Robert McIntire and Wm. F. McIntire, trading under the name of Robert and William F. McIntire.

Foreign Attachment.

Case, Bail $20,000, returnable the second Monday of December, 1847. Attach the ship Royal Saxon, and the goods and chattels, rights credits and effects of the defendant, in the hands or possession of Capt. Inglesby, and summon him as garnishee.

ED. WALN.

JAMES MAGEE et al.
vs.
ROBERT MCINTIRE et al. defendants,
J. C. INGLEBY, garnishee.

S. C. Dec. T. 1847, No. 49.—Foreign Attachment.—Bail $20,000.

November 19th, 1847.—On motion of Samuel Hood, attorney for garnishee, the court granted a rule on plaintiffs to show cause of action, returnable Monday, the 22d November, 1847.

Rule to show cause, filed November 19, 1847.

December 11, 1847.—On motion of Mr. Hood, rule to show cause of action, and why the attachment should not be dissolved.

December 27th, 1847.—Rule discharged.

MAGEE et al.
vs.
McINTIRE et al.

Eastern district of Pennsylvania, Supreme Court, December Term, 1847—No. 49.

James Magee, of the city of New Orleans, Louisiana, merchant, and one of the firm that is plaintiff in this suit, being duly sworn saith, that Robert McIntire and William F. McIntire, co-partners in trade, under the name of Robert & William F. McIntire, and who are the above defendants, are justly and truly indebted in the sum of three thousand pounds sterling money of Great Britain, equal to fifteen thousand dollars lawful money of the United States of America, to the said plaintiffs, as holders, for value of two certain bills of exchange, dated each at New Orleans, the 5th day of June, 1847, drawn by the said plaintiffs, payable sixty days after sight, to the order of the said plaintiffs, upon and accepted by the said defendants, for the payment of fifteen hundred pounds sterling each, which said bills of exchange matured at a day now past, and are due and unpaid, and have been duly protested for non-payment, and returned upon the plaintiffs: and that the said defendants are not now, nor were they, at the issuing of the writ in this case, inhabitants of the commonwealth of Pennsylvania, nor residing or sojourning within the same.

JAMES MAGEE.

Subscribed and sworn to before me, this 17th day of November, 1847. Witness my hand and official seal.

JOHN BISSELL, [L. S.]
Commissioner for Pennsylvania.

Affidavit of cause of action, filed December 27, 1847.

MAGEE et al.
vs.
McINTYRE et al.

Dec. Term, 1847—No. 49.

To the hon'ble Judges of the Supreme Court for the eastern district of Pennsylvania.

The petition of James Magee, of the city of New Orleans, and one of the plaintiffs in this case, respectfully represents that the said defendants are justly indebted to the plaintiffs, in the sum of fifteen thousand dollars; that by process of foreign attachment issued as above out of your honorable court, the ship "The Royal Saxon" has been attached as the property of the defendants; that the said ship is of a chargeable and perishable nature, from the daily expense of wharfage, custody fees, &c., from deterioration to her hull, apparel and furniture, from exposure to the sun and weather. Your petitioner therefore prays an order of sale of the said ship, her tackle, apparel and furniture, seized as aforesaid, and that the court will make such disposition of

the proceeds, by investment or otherwise, as will conduce to the justice of the case.

JAMES MAGEE.

UNITED STATES OF AMERICA,
State, city and county of New York, ss:

Be it known, to all whom the same doth or may concern, that I, John Bissell, a commissioner appointed by the governor of the State of Pennsylvania, and under the laws of said State, with full power and authority to take acknowledgments or proof of all deeds or other instruments in writing, depositions and other testimony, &c., &c., in the State of New York, to be used in said State of Pennsylvania, duly commissioned by said governor, and affirmed, and dwelling in the city of New York, do certify, that on the day of the date hereof, before me personally appeared James Magee, who hath subscribed his name to the annexed petition, who upon his solemn upon the Holy Evangelists of Almighty God, by me duly administered to him, said that he had read the said petition, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and that as to those matters he believes it to be true.

In witness whereof, I have hereunto set my hand and official seal, the 13th day of November, 1847.

JOHN BISSELL, [L. S.]
Commissioner of Pennsylvania.

Petition for order of sale, filed January 15, 1848.

January 15, 1848.—On affidavit filed, and motion of E. Waln, esq., for plaintiffs, rule to show cause why an order should not be made for sale of the "Royal Saxon."

Rule to show cause why an order of sale should not be made, filed January 15, 1848.

January 24, 1848.—On motion of Samuel Hood for garnishee, the court granted a rule on plaintiffs to show cause why the barque Royal Saxon should not be discharged from the custody of the sheriff, under the writ of foreign attachment in the above case, returnable Saturday, 29th January, 1848.

Motion filed 24 Jan., 1848.

MAGEE and others
v.
ROBT. MCINTIRE and WM. F. MCINTIRE, trading under the name of ROBERT and WM. F. MCINTIRE.

S. C., Dec. T. 1847—No. 49.

COUNTY OF PHILADELPHIA, *ss:*

The affidavit of James C. Ingleby, who being duly sworn deposeth and saith, that he is master of the British barque Royal Saxon, and has

been summoned as garnishee in the foreign attachment issued from the supreme court of Pennsylvania, viz. of the term mentioned above, and that the said barque has been seized by the sheriff under said attachment. That the owner of the said barque is Robert McIntire, of the city of Londonderry, Ireland. That the said Robert is the sole owner of the said barque—that she is registered in his name alone, and that she is not the property of the defendants above named.

This defendant further saith, bail in the above case has been demanded of him, in the sum of $20,000, though in fact and in truth the value of said barque is less than one-third that amount, and this deponent verily believes, that the same would not yield one-fourth of $20,000, at public sale in Philadelphia, and that divers sums of money for necessaries, supplies, and mariners' wages, amounting in all to more than one thousand eight hundred dollars, are liens on the said barque, and would be liens on the proceeds of sales of said barque, if she should be sold. That this deponent has been unable to procure bail in so large an amount as $20,000, and has been therefore compelled to remain at the port of Philadelphia, since the time of the seizure of said barque, viz., about the 4th day of November, 1847, at great expense, loss and inconvenience. This deponent farther saith, that by a letter from the defendants above named, R. & W. F. McIntire, to him, dated at Londonderry, Dec. 2, 1847, he is advised as follows, viz., "the bills alluded to (viz., the bills on which the said suit of Magee et al. v. McIntire & Co. have been instituted,) are now in England, and arrangements have been made with the holders in Liverpool to accept of our offer, and we have much pleasure in informing you, that we have made satisfactory arrangements with our creditors here;" and this deponent verily believes that the said advices so made are true.

JAMES C. INGLEBY.

Sworn and subscribed before me, this 24th January, 1848.

A. M. COHEN, *pro Py.*

Affidavit of James C. Ingleby, filed January 24, 1848.

Jan. 29, 1848.—Rule to show cause, &c., discharged.

Rule for order of sale absolute, and order made for the sale of the barque "Royal Saxon," by the sheriff, at public outcry, on Wednesday, the 9th of February, 1848.

Rule filed, Jan. 29, 1848.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

[L. S.] The Commonwealth of Pennsylvania, to the Sheriff of Philadelphia county, greeting:

We command you that you expose to sale, on the ninth day of February next, the ship Royal Saxon, at public vendue, to the best and highest bidder, having given due and public notice for the same, now being in your custody and possession by virtue of a writ of foreign attachment issued out of our supreme court of Pennsylvania in and for

the eastern district, at the suit of James Magee and James Beazley, trading under the firm of James Magee & Company, against Robert McIntire and William F. McIntire, trading under the name of Robert & William F. McIntire; and also by virtue of another writ of foreign attachment issuing out of the said court at the suit of Robert Bell, against the said defendants, and ordered by the said court to be sold; and the moneys arising from said sale bring into the said court, to abide the further order and decree thereof; and how you shall have executed this writ, make return to the said court, together with this writ.

Witness the honorable John Bannister Gibson, L.L. D., chief justice of our said supreme court, at Philadelphia, this thirty-first day of January, in the year of our Lord one thousand eight hundred and forty-eight.

J. SIMON COHEN, *Prothonotary*.

Sheriff return to Order of Sale.

To the honorable the Judges within named:

I do certify, that in obedience to the directions contained in the within writ, after having given due notice of the time and place of sale by advertisements in the public newspapers, and by handbills set up in the most public places in my bailiwick, I did, on Wednesday the ninth day of Feb. 1848, at one o'clock in the day, at the Philadelphia Exchange, in the city of Philadelphia, expose the ship Royal Saxon within mentioned to public sale or vendue, when and where William G. Ward and Nathaniel S. Carryl, of New York, bought the same, for the price or sum of two thousand eight hundred dollars, they, by their agent, William M. Everts, being the highest and best bidder for the same; which said sum of money before the judges within named I have ready, as by the within writ I am commanded. So answers

HENRY LELAR, *Sheriff*.

Order of sale returned and filed, February 21, 1848.

Sheriff's Sale.

By virtue of an order of sale, issued out of the supreme court for the eastern district of Pennsylvania, to me directed, will be exposed to public sale or vendue, on Wednesday, February 9th, 1848, at 1 o'clock p. m., at the Philadelphia Exchange, the barque Royal Saxon, together with her tackle, apparel and furniture, as she now lies at the first wharf below Almond street. The Royal Saxon was built at St. John, in 1838, and is 442 tons burden; was coppered, and sheathed over the bends at Liverpool, in September, 1844. She has nearly two suits of sails, three anchors, two chains, three boats, twelve water casks, and running rigging complete.

HENRY LELAR, *Sheriff*.

Philadelphia, Sheriff's office, February 1, 1848.

February 9th, 1848.—Supreme court in banc. Present all the judges.

February 9, 1848 —Mr. Hood moves to rescind the order of sale of the Royal Saxon. Motion denied.

"Sold the ship Royal Saxon to William P. Ward and Nathaniel T. Carryl, of New York, for the price or sum of two thousand eight hundred dollars."

Magee v. McIntyre. Dec. Term, 1847, No. 49.
Bell v. Same. March " " " 16. } S. C.

To the hon'ble Thomas S. Bell, of the Supreme Court for the eastern district of Pennsylvania, sitting at Nisi Prius:

The petition of the plaintiffs respectfully showeth, that by order of this honorable court, the barque "The Royal Saxon," seized by the sheriff, under process of foreign attachment in the said case, was exposed to public sale at the Exchange, on the 9th of February, 1848, as being a chargeable article, and was sold for the sum of twenty-eight hundred dollars, which sum, less the sheriff and prothonotary's costs, being nett, has been paid into this honorable court to abide its further order; that the said suits of foreign attachment may give rise to considerable delay before their determination.

Your petitioners therefore pray, that this honorable court will direct that the said sum of $ may be invested under order of this honorable court, in
there to remain, to abide the further order of the court. And as in duty bound they will ever pray, &c.

JAMES McGEE & CO.,
ROBT. BELL,
By EDW. WALN,
Att'y at law.

Feb. 26, 1848.

In the Supreme Court for the eastern district of Pennsylvania.

EASTERN DISTRICT OF PENN'A:

Robert McIntyre and William F. McIntyre, trading as Robert and William F. McIntyre, were attached to answer James McGee and James Beazley, trading as James McGee & Co., of a plea of trespass on the case upon promise, and thereupon the said plaintiffs, by Ed. Waln, their attorney, declare, for that whereas the said plaintiffs, heretofore, to wit, on the 5th day of June, 1847, at New Orleans, Louisiana, according to the usage and custom of merchants from time immemorial used and approved of, made their two certain bills of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bills of exchange to the said defendants, by which said bills of exchange the said plaintiffs then and there requested the said defendants, sixty days after sight of the said two bills of exchange, to pay the said first bills of exchange, second and third of the same tenor and date not paid, to the order of themselves, in London,

the sum of £1500 stlg., value received; which said bills respectively numbered 291, 292, the said defendants, afterwards, to wit, accepted at 60 days from 16 July, due 17 September, and payable at Mess. Dennison's & Co., London, to wit, at Londonderry, according to the usage and custom of merchants; by means whereof, and according to the said usage and custom, the said defendants then and there became liable to pay to the said plaintiffs the said sums of money in the said two bills of exchange specified, according to the tenor and effect thereof, and at the said defendants' acceptance thereof; and being so liable, they the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London, to wit, at the district aforesaid, undertook, and then and there promised the said plaintiffs to pay them the said sum of money on the said bills specified, according to the tenor and effect of the said bills of exchange and of their said acceptance thereof; and the said plaintiffs aver, that the said two bills of exchange for £1500 stlg. each, at the time the same became payable, according to the tenor and effect thereof, were and are of great value, to wit, of the value of $15,000 federal currency of the United States. Yet the said defendants not regarding their promise, but intending to defraud the said plaintiffs, have not yet paid the said bills or the said sums of money due thereon, or any part thereof, to the said plaintiffs, although often requested so to do; but the said defendants, to pay them the same, have wholly neglected and refused, and still do refuse, to the damage of the plaintiffs of $30,000, and therefore they bring suit.

JOHN DOE,
RICHARD ROE,
Pl'dges to Pros.
ED. WALN, *pro Pl'ffs.*

Narr. in case, filed July 20, 1848.

August 9th, 1848.—On motion of E. Waln, esq., judgment at the third term for want of an appearance.

MAGEE
v.
McINTIRE.

Dec. Term, 1847—No. 49—Sup. Court.

It is agreed that the judgment entered in this case be set aside, as having been entered through error.

WALN, *for Plaintiffs.*
HOOD, *for Defendant.*

Agreement to set aside judgment filed August 31st, 1848.

MAGEE
v.
McINTIRE.

December Term, 1847.—No. 49.

For that whereas, the said plaintiffs heretofore, to wit, on the 5th day of June, 1847, at New Orleans, La., that is to say, at the district aforesaid, according to the usage and custom of merchants from time

immemorial used and approved, made their certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill to the said defendants, and thereby then and there, the said bill being numbered 291, requested the said defendants sixty days after sight of that their first of exchange, second and third of the same tenor and date not paid, to pay to the said plaintiffs, or order, the sum of £1,500 stg., value received, which said bill of exchange they, the said defendants, afterwards, to wit, at 60 days from the 16th of July, due 17th of September, and payable at Messrs. Dennison's & Co., London, accepted according to the usage and custom of merchants, by means whereof, and according to the said usage and custom, the said defendants then and there became liable to pay the said plaintiffs the said sum of money in the said bill specified, according to the tenor and effect thereof, and of the said acceptance; and being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London, to wit, at the district aforesaid, undertook and promised the said plaintiffs to pay them the said sum in the said bill specified, according to the tenor and effect thereof, and of their said acceptance; and the said plaintiffs aver that the said £1,500 stg., in the said bill mentioned, at the time of making the said bill, and when the same became payable, were and still are of great value, to wit, of the value of $7,500, lawful federal money of the United States, to wit, at the district aforesaid.

And whereas, also, the said plaintiffs heretofore, to wit, on the 5th day of June, 1847, at New Orleans, La., that is to say, at the district aforesaid, according to the usage and custom of merchants from time immemorial, made also their certain other bill of exchange, being numbered 292, bearing date the day and year aforesaid, and then and there directed the said bill of exchange to the said defendants, and thereby then and there directed the said bill to the said defendants at Londonderry, by which said bill the said plaintiffs requested the said defendants, at 60 days after sight, pay that their first of exchange, second and third of same tenor and date not paid, to the said plaintiffs, or order, the sum of £1,500 stg., value received; which said bill the defendants afterwards accepted, at 60 days from 16 July, due 17 July, payable at Messrs. Dennision's & Co., London, according to the said usage of merchants, by means whereof, and according to the said usage, the said defendants then and there became liable to pay the said plaintiffs the said sum in the said bill specified, according to the tenor and effect thereof, and of their said acceptance; and being so liable, the said defendants in consideration thereof, afterwards, to wit, on the day and year aforesaid, at, &c., undertook and promised the plaintiffs to pay them the sum in the said bill specified, according to the tenor and effect thereof, and of their said acceptance; and the said plaintiffs aver that the said £1,500, in the said bill specified, at the time of the making thereof, and also at its maturity, according to the tenor and effect thereof, were and are of great value, to wit, of the value of $7,500, lawful federal money of the United States, to wit, at the district aforesaid.

And whereas, also, the said defendants afterwards, to wit, on the first day of November, 1847, at London, to wit, at the district aforesaid, were indebted to the said plaintiffs in the further sum of $25,000, like lawful money, for goods sold and delivered to the said defendants by the said plaintiffs, at their special instance and request, and also in the further sum of $25,000, like lawful money, for money by the said plaintiffs before that time lent and advanced, to be paid, laid out and expended for the said defendants, at their like special instance and request, and being so indebted, they the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at, &c., undertook and promised the plaintiffs to pay them the said several sums of money when thereunto requested.

And whereas, also, the said defendants, to wit, on the day and year last aforesaid, at the district aforesaid, accounted with the said plaintiffs of and concerning divers other sums of money from the said defendants to the said plaintiffs before that time due and owing and then in arrear and unpaid, and upon such accounting, the said defendants were then and there found to be in arrear and unpaid and indebted to the said plaintiffs in the further sum of $25,000, of like lawful money, and being so found indebted, the said defendants undertook and promised to pay the plaintiffs the said last mentioned sum when thereto requested.

Yet the said defendants not regarding their promises, but intending to deceive the plaintiffs, have not yet paid the said several sums of money or any of them to the said plaintiffs, although often requested, but the said defendants to pay them the same have hitherto wholly neglected and refused, and still do refuse, to the damage of the said plaintiffs of $50,000, and therefore they bring suit, &c.

JOHN DOE,
R. ROE,
Pl'dges to Pros.
ED. WALN,
Pro Pl'tff.

Additional counts to narr, filed August 31, 1848.

MAGEE vs. McINTIRE.

Supreme Court, Dec. 1847—No. 49.

Defendants plead non-assumpserunt payment, with leave to give the special matter in evidence, set off with leave.

HOOD, *Fbr Defendants.*

17 August, 1848.

Plea of defendant, filed August 31, 1848.

In the Supreme Court of Pennsylvania for the Eastern District.

MAGEE vs. McINTIRE. Of the Term of Dec. 1847, No. 49.

And now, the 31st day of August, 1848, agreeably to the directions of the act of the general assembly of the commonwealth of Pennsyl-

vania, in such case made and provided, the plaintiffs enter a rule of reference in the above case, and declare it to be their determination to have arbitrators chosen on the 16th day of September, 1848, at 10 o'clock a. m. of that day, at the office of the prothonotary of the said court, in the east wing of the State-house, in the city of Philadelphia, for the trial of all matters in variance in the suit between the above parties.

ED. WALN, *Pro Pl'tff.*

Order for rule of reference, filed August 31, 1848.

In the Supreme Court of Pennsylvania for the Eastern District.

JAMES MAGEE & JAMES BEAZLEY, trading under the firm of James Magee & Company,
vs.
ROBERT MCINTIRE AND WILLIAM F. MCINTIRE, trading under the name of Robert & William F. McIntire.

Of the Term of December, 1847—No. 49.

And now, the thirty-first day of August, 1848, agreeably to the directions of the act of the general assembly of the commonwealth of Pennsylvania in such case made and provided, the plaintiffs by attorney, by writing filed, entered a rule of reference in the above case, and declared it to be their determination to have arbitrators chosen on the 16th day of September, 1848, at 10 o'clock a. m. of that day, at the office of the prothonotary of the said court, in the east wing of the State-house, in the city of Philadelphia, for the trial of all matters in variance in suit between the above parties.

In witness whereof I have hereunto set my hand, and affixed [L. S.] the seal of the said supreme court, at Philadelphia, this thirty-first day of August, A. D. 1848.

A. M. COHEN, *pro Prothonotary.*

49.—Decem. T., 1847.—Supreme Court.

JAMES MAGEE et al.
v.
ROBERT MCINTIRE et al.

Rule of reference.

WALN.

1848, Aug. 31, served copy of the within personally on Mr. Hood, the defendant's attorney, at his office, at 20 m. to 12 o'clock, m. So says

E. WALN.

Sept. 16, 1848.—Parties appear by attorneys, and agreed that Wm. A. Crabb, George Campbell, and William McIlhenny, be the arbitra-

tors in this case, to meet on Monday, the 25th day of Sept., 1848, at 4 p. m., at Stigman's Hotel. HOOD, *pro Def'ts.*

In the Supreme Court of Pennsylvania for the eastern district.

JAMES MAGEE & JAMES BEAZLEY, trading under the firm of James Magee & Company,
v.
ROBERT McINTIRE & WILLIAM F. McINTIRE, trading under the name of Robert & William F. McIntire.

Of the Term of December, 1847.—No. 49.

I certify that agreeably to the provisions of the act of assembly of the commonwealth of Pennsylvania, entitled "An act relating to reference and arbitration," William A. Crabb, George Campbell, and William McIlhenny, are appointed arbitrators for the trial of all matters in variance in the above suit between the said parties, who, or a majority of whom, are to make their award, and to transmit the same to the prothonotary of the said court, agreeably to the provisions of the said act of assembly in such case made and provided.

The said arbitrators are to meet at Stigman's Hotel, George street, above Sixth, on the twenty-fifth day of September, 1848, at 4 o'clock in the afternoon.

In witness whereof I have hereunto set my hand, and affixed [L. S.] the seal of the said supreme court, at Philadelphia, this sixteenth day of September, A. D. 1848.

A. M. COHEN, *pro*
J. S. COHEN,
Prothonotary.

September 25, 1848.—The parties, and Wm. McIlhenny, one of the arbitrators, met and adjourned to Friday, the 6th of October, at 4 p. m., same place.

Oct. 6, 1848.—All present.—The arbitrators were duly sworn or affirmed, and commenced the hearing, and adjourned to meet on Saturday, the 14th instant, at the same hour and place.

Oct. 14th, 1848.—All present.—The arbitrators having heard the parties, their proofs, and allegations, and duly considered the same, do find and award in favor of the plaintiff the sum of fourteen thousand two hundred and fifty-one dollars and seventy-five cents, ($14,251 75.)

GEO. CAMPBELL,
WM. McILHENNEY,
WM. A. CRABB.

Arbitration Costs.

McIlhenny, 3 times	$3 00
Crabb and Campbell, 2 each	4 00
Room	3 00
	$10 00

Supreme Court.

JAMES MAGEE et al., trading, &c.,
v.
ROBERT McINTIRE et al., trading, &c.

Certificate of reference.

WALN.

Filed Oct. 16, 1848.

In the Supreme Court of Pennsylvania for the eastern district.

JAMES MAGEE & JAMES BEAZLEY, trading under the firm of James Magee & Company,
v.
ROBERT McINTIRE & WILLIAM F. McINTIRE, trading under the name of Robert & William F. McIntire.

Of the Term of 185 , No. Sur appeal from award of arbitrators in favor of the plaintiffs.

We, Samuel Hood, esq., attorney of the above named defendants, and Henry L. Gaw, No. 3 Sansom st., broker, severally acknowledge ourselves to be indebted to the above named plaintiff, in the sum of one hundred dollars, lawful money of the United States, to be levied and made out of our proper goods and chattels, lands and tenements.

Whereas, the above named defendants have this day entered an appeal from the award of arbitrators in the above case, with the prothonotary of the supreme court for the eastern district of Pennsylvania, to the said supreme court, agreeably to the act of assembly in such case made and provided:

Now, the condition of this recognisance is such, that if the said appellants shall pay all costs that have accrued, or may accrue, or be legally recovered against the said appellants, then this recognisance to be void; otherwise to be and remain in full force and effect.

SAM. HOOD,
Attorney for R. & W. F. McIntire.
H. L. GAW.

Taken and acknowledged before me, this third day of November, A. D. 1848.
J. SIMON COHEN,
Prothonotary.

Samuel Hood, esq., attorney for the above named defendants, being duly sworn according to law, says that the appeal from the award of arbitrators, entered in the above case, is not entered for the purpose of delay, but because he firmly believes injustice has been done.

SAM. HOOD.

Sworn and subscribed before me, this 3d day of November, A. D. 1848.

J. SIMON COHEN, *Pro'y.*

49.—Dec. T., 1847.—Supreme Court.

MAGEE
v.
McINTIRE.

Affidavit and recognisance of bail, sur appeal from the award of arbitrators.

Filed November 3, 1848.

On motion of E. Waln, esq., for plaintiffs, rule granted in defendants, to show cause why they sould not file an affidavit under the second rule of the district court, now in force in this court, and in default thereof, within a time to be fixed by the court, that the said rule be extended to this case, returnable Saturday next.

WALN, *for Plaintiff*.

January 17, 1849.

Rule to admit or deny partnership.

Filed January 18, 1849.

January 25, 1849.—At Nisi Prius, before Coulter J., a jury being called, summoned, chosen, and empannelled, come, to wit: Milton Mendenhall, Simon Guyer, Joseph Rogers, Peter Caster, Jacob Carter, Wm. R. Branner, Charles Edwards, Joseph Hunt, Samuel M. Fox, Abraham Langebartel, Thomas T. Azpell, William Hynes, who being duly sworn and affirmed according to law, upon their oaths and affirmations, respectively do say, that they find for the plaintiff the sum of fourteen thousand four hundred and ninety-three dollars and seventy-seven cents, ($14,493 87,) with six cents costs. Verdict taken January 25th, 1849.

And now, January 25, 1849, I hereby waive the four days to file reasons for a new trial, and consent to judgment being entered on verdict, and that the prothonotary pay the money to Ed. Waln, esq., attorney for plaintiffs.

SAM. HOOD, *Attorney for Defendant*.

Filed January 25, 1849.

January 26, 1849. Jury fee paid, and judgment.

Docket Entries.

December Term, 1847.—49.

JAMES McGEE & JAMES BEAZLEY, trading under the firm of James McGee and company,
vs.
ROBERT McINTIRE and WILLIAM F. McINTIRE, trading under the name of Robert and William F. McIntire.
} Foreign attachment.

Case bail, $20,000, returnable second Monday December, 1847. "Attached November 8th, 1847, the barque Royal Saxon, as within commanded, and summoned Capt. Inglesby, as garnishee."

Waln—47.—Hood for Inglesby, garnishee, D. B. E., and March 23, 1848, for the defendants, Sam. Hood. Wt. Inqy. J. 48, 10.

November 19th, 1847.—On motion of Samuel Hood, esq., for garnishee, rule granted on plaintiffs to show cause of action, returnable Monday, 22d November, 1847.

December 11, 1847.—On motion of Mr. Hood, rule to show cause of action, and why the attachment should not be dissolved.

December 27, 1847.—Rule discharged.

December 27, 1847.—Affidavit of cause of action filed.

January 15, 1848.—On affidavit filed, and on motion of E. Waln, esq., for plaintiffs.—Rule to show cause why an order should not be made for the sale of the "Royal Saxon."

January 24, 1848.—On motion of S. Hood, esq., and affidavit filed. Rule to show cause why the barque Royal Saxon should not be discharged from the custody of the sheriff, under the writ of foreign attachment in the above case.

January 29, 1848.—Rule to show cause, &c., discharged.

January 29, 1848.—Rule for order of sale absolute, and order made for the sale of the barque Royal Saxon by the sheriff, at public outcry, on Wednesday, the 9th February, 1848.

January 31, 1848.—Order of sale exit.

February 9, 1848.—Mr. Hood moves to rescind the order of sale of the Royal Saxon—motion denied. "Sold the ship Royal Saxon to William G. Ward and Nathaniel T. Carryl, of New York, for the price or sum of two thousand eight hundred dollars."

July 20, 1848.—Narr filed.

August 31, 1848.—Agreement to set aside judgment filed.

August 31, 1848.—Additional counts to narr filed.

August 31, 1848.—Plea filed, defendants plead non-assumpserunt; payment with leave to give the special matter in evidence, set off with leave, &c.

August 31, 1848.—Plaintiffs, by attorney, by writing filed, entered a rule of reference; arbitrators to be chosen September 16th, 1848, at 10 o'clock, a. m.

September 16, 1848.—Parties appeared by attorneys, and agreed that William A. Crabb, George Campbell, and William McIlhenny, be the arbitrators in this case, to meet on Monday, the twenty-fifth day of September, 1848, at four o'clock p. m. at Stigman's Hotel.

October 16, 1848.—Award of arbitrators filed, awarding in favor of the plaintiff the sum of fourteen thousand two hundred and fifty-one dollars and seventy-five cents, ($14,251 75.)

October 16, 1848.—Judgment.

November 3, 1848.—Affidavit and recognisance of bail, sur appeal from the award of arbitrators filed, costs paid, and defendants' appeal from the award.

January 25, 1848.—At Nisi Prius, before Coulter, J., a jury being called, summoned, chosen, and empannelled, come, to wit: Milton Mendenhall, Simon Guyer, Joseph Rogers, Peter Castor, Jacob Car-

ter, William R. Branner, Charles Edwards, Joseph Hunt, Samuel M. Fox, Abraham Langebartel, Thomas T. Azpell, William Hynes, who, being duly sworn and affirmed according to law, upon their oaths and affirmations respectively do say, that they find for the plaintiff the sum of fourteen thousand four hundred and ninety-three dollars and seventy-seven cents, ($14,493 77,) with six cents costs. Verdict taken January 25th, 1849.

And now, January 25, 1849, by writing filed, Saml. Hood, esq., attorney for defendant, waives the four days to file reasons for a new trial, and consents to judgment being entered on verdict, and that the prothonotary pay the money to Edward Waln, esq., attorney for plaintiffs. January 26, 1849, jury fee paid, and judgment.

Execution Docket.

July Term, 1848.

JAMES MAGEE and JAMES BEAZLEY, trading under the firm of James Magee and Company,
vs.
ROBERT MCINTIRE and WILLIAM F. MCINTIRE, trading under the name of Robert & William F. McIntire.

Writ of Inquiry, returnable the first Monday of September, 1848. Exits. August 14th, 1848. (D. 47, 49.)—Waln, 10.

I certify the above and foregoing to be a true, full, and accurate copy of the whole record, docket entries and proceedings in the above case, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of the said Supreme Court, at Philadelphia, this eighth day of February, A. D. 1854. RO. TYLER, *Pro.*

(B.)

BELL vs. MCINTIRE. } March T., 1848, Sup. Court.

Exemplification of Record.

Pleas before the honorable John Bannister Gibson, L.L. D., chief justice of the Supreme Court of Pennsylvania, and his associate justices of the same court, at a Supreme Court of Pennsylvania in and for the eastern district, at Philadelphia. Of the Term of March, 1848. No. 16.

It is thus contained:

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:

We command you that you attach Robert McIntyre and W. F. McIntyre, trading as R. & W. F. McIntyre, late of your county, by

all and singular their goods and chattels, lands and tenements, in whose hands or possession soever the same may be, so that they be and appear before the justices of our supreme court of the State of Pennsylvania, at our same court, to be holden at Philadelphia, in and for the eastern district of Pennsylvania, on the third Monday of March next, to answer Robert Bell.

And we also command you that you summon all persons in whose hands or possession the said goods or chattels or any of them may be attached, so that they and every of them be and appear before the said court, at the day and place aforesaid, to answer what shall be objected against them, and abide the judgment of the court therein; and have you then and there this writ.

Witness the honorable John Bannister Gibson, esquire, doctor of laws, chief justice of our said supreme court, at Philadelphia, the eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-eight.

J. SIMON COHEN,
Prot. Sup. Eastern district.

Attached as within commanded, and summoned garnishees as follows, viz., by giving a true and attested copy of the within writ to Robert Taylor, January 19th, 1848, at 12 o'clock m., and by giving a like copy of the within writ to James C. Ingleby, January 20th, 1848, at 5 o'clock p. m., and making known to them the contents thereof. So answers

CHARLES LELAR, *D. Sheriff.*
HENRY LELAR, *Sheriff.*

16th March Term, 1848, Supreme Court.

ROBERT BELL
vs.
ROBERT MCINTYRE & W. F. MCINTYRE, trading as R. & W. F. McIntyre, & James C. Ingleby & Robert Taylor, garnishees.

Foreign Attachment.

Case, bail $12,000, returnable the third Monday of March, 1848. Attach the barque Royal Saxon, goods and chattels, rights, credits, and effects of the defendant, in the hands or possession of James C. Ingleby and Robert Taylor, and summon them as garnishees.

WALN.

ROBERT BELL
vs.
R. MCINTYRE & al.

S. C.—March T., 1848.—No. 16.

20th January, 1848, on motion of S. Hood, attorney for garnishees, the court granted a rule on plaintiff to show cause of action, and why the attachment should not be dissolved.

BELL
vs.
McINTYRE.

Sup. Court.—March Term, 1848.—No. 16.

Robert Bell, of the city of Philadelphia, the above plaintiff, being duly sworn according to law, saith, that Robert McIntyre and William F. McIntyre, co-partners in trade at Londonderry, Ireland, under the name of R. & F. McIntyre, and who are the above defendants, are justly indebted to the said plaintiff in the sum of twenty-one hundred pounds, one shilling and eight pence sterling, equal to ten thousand five hundred dollars, lawful money of the United States of America, as the holder of a certain bill of exchange dated New Orleans, the twenty-fifth day of June, 1847, drawn by James Magee & Co., payable sixty days after sight, to the order of the drawers, and by them endorsed upon, and accepted by the said defendants for the payment of twenty-one hundred pounds, one shilling and eight pence sterling, (£2,100, 1s. 8d,) which said bill of exchange matured at a day before the issuing of the writ in this case, and is due and unpaid, and has been regularly protested for non-payment by the said defendants; and that the said defendants are not now, nor were they, at the issuing of the writ, residing within the commonwealth of Pennsylvania, nor being within the county of Philadelphia.

ROBERT BELL.

Sworn to and subscribed before me this twentieth day of January, 1848.

A. M. COHEN,
Comm. of Bail.

Affidavit of cause of action, filed Jan'y 20th, 1848.

To the hon'ble Judge of the Supreme Court, holding a court of Nisi Prius for the eastern district of Pennsylvania.

The petition of Robert Bell, the plaintiff in the above suit, respectfully showeth, that the said defendants are justly and truly indebted to him as the holder of the bill of exchange on which suit is brought, in the sum of ten thousand five hundred dollars, lawful money of the United States; that by process of foreign attachment issued in the said case, the barque "Royal Saxon" has been attached as the property of the defendants; that the barque is of a chargeable and perishable nature from the daily expense of wharfage, custody fees, mariners' wages, and liable to deterioration in her hull, apparel, and furniture, from exposure to ice, wind, sun, and weather.

Your petitioner therefore prays an order of sale of the said barque, her tackle, apparel and furniture, seized as aforesaid, and that the court will make such disposition of the proceeds, by investment or otherwise, as to them may seem meet and conducive to the justice of the case.

And as in duty bound, &c.

ROBERT BELL.

Sworn to and subscribed before me, this twentieth day of January, 1848.

A. M. COHEN, *Com. of Bails.*

Petition for an order of sale, filed Jan'y 20th, 1848.

On affidavit, rule to show cause why an order for sale of the barque Royal Saxon should not be made ret'ble Monday morning next, at 9½ o'cl'k.

WALN, *for Plff.*

Jan. 22nd, 1848.

Rule to show cause, &c., filed Jan. 22, 1848.

Jan'y 24th, 1848.—On motion of S. Hood, esqr., rule to show cause why the barque "Royal Saxon" should not be discharged from the custody of the sheriff under the writ of foreign attachment in above case.

Jan'y 29th, 1848.—Rule discharged.

Jan'y 29, 1848.—Rule for order of sale absolute, and order made for the sale of the barque "Royal Saxon" by the sheriff, at public outcry, on Wednesday, 9th Feb'y, 1848.

Jan'y 31, 1848.—Order of sale exit.

In the Supreme Court for the eastern district of Pennsylvania, of March Term, 1848.—No. 16.

COUNTY OF PHILADELPHIA, *ss*:

Robert McIntyre and William F. McIntyre, trading as R. & W. F. McIntyre, have attached to answer Robert Bell of a plea of trespass in the case, &c.; and thereupon the said plaintiff, by William B. Hieskell, his attorney, complains, for that whereas James Magee and James Beazley, trading as James Magee & Company, on the twenty-fifth day of June, A. D. 1847, at New Orleans, to wit, at the county aforesaid, made their bill of exchange in writing, and directed the same to the defendants, by the name and style of Messrs. R. & W. F. McIntyre, Londonderry, and thereby required the defendants to pay to the order of themselves, the said James Magee & Company, in London, twenty-one hundred pounds one shilling and eight pence sterling, value received sixty days after sight of that of their first of exchange, (second and third unpaid;) and the said James Magee & Company then endorsed the same to the order of N. W. Rothschild & Sons, who then endorsed the same to the plaintiff; and the defendants afterwards, on the 29th day of August, A. D. 1847, saw and accepted the said bill, payable at Messrs. Dennison & Co., London; and the said period has now elapsed; and the defendants then and there promised the plaintiff to pay him the amount of the said bill according to the tenor and effect thereof, and of the said acceptance and endorsements, but neither the defendants nor the said Messrs. Dennison & Co., nor any person or persons on behalf of the defendants, did or would pay the said bill, or any part thereof, although the said bill was presented for payment at

the said Messrs. Dennison & Co., London, aforesaid, on the day when it became due; and the plaintiff avers, that the said sum of twenty-one hundred pounds one shilling and eight pence sterling in the said bill mentioned. at the time of making the said bill, and when the same became due, was and is of great value, to wit, of the value of $10,267 07, lawful money of the United States of America.

And whereas, the defendants afterwards, on the first day of January, A. D. 1848, in the county aforesaid, were indebted to the plaintiff in twenty thousand dollars for money paid by the plaintiff for the use of the defendants at their request, and in twenty thousand dollars for money found to be due from the defendants to the plaintiff on accounts stated between them. And the defendants afterwards, on the day and year last aforesaid, in the county aforesaid, in consideration of the last mentioned promises respectively, then and there promised to pay the said last mentioned several moneys respectively on request; yet the defendants have disregarded their promises, and have not paid any of the said moneys, or any part thereof, to the damage of the plaintiff twenty thousand dollars, and therefore he brings this suit, &c.

W. B. HIESKELL, *pro Plff.*

Narr., filed Jan'y 4, 1849.

In the Supreme Court of Pennsylvania for the eastern district.

ROBERT BELL
vs.
ROBERT McINTYRE and WILLIAM F. McINTYRE, trading as R. & W. F. McIntyre.

Of the Term of March, 1848.—No. 16.

And now, the fourth day of January, 1849, agreeably to the directions of the act of the general assembly of the commonwealth of Pennsylvania, in such case made and provided, the plaintiff enters a rule of reference in the above case, and declares it to be his determination to have arbitrators chosen on the twenty-fourth day of January, 1849, at 9 o'clock a. m. of that day, at the office of the prothonotary of the said court, in the east wing of the State-house, in the city of Philadelphia, for the trial of all matters in variance in the suit between the above parties. W. B. HIESKELL, *Att'y for Plff.*

Order for rule of ref., filed Jan. 4, 1849.

Docket Entries.

March Term, 1848.

ROBERT BELL
vs.
ROBERT McINTYRE and W. F. McINTYRE, trading as R. & W. F. McIntyre, and James C. Ingleby and Robert Taylor, garnishees. } 16.

Waln, Hieskell.—Hood for Garnishee.—Hood for Dfts.

Foreign attachment case, bail $12,000, ret'ble third Monday of March, 1848, exit Jan'y 18, 1848, "attached as within commanded,

and summoned garnishees as follows, viz: By giving a true and attested copy of the within writ to Robert Taylor, Jan'y 19th, 1848, at 12 o'clock, m., and by giving a like copy of the within writ to Jas. C. Ingleby, Jan. 20, 1848, at 5 o'clock p. m., and making known to them the contents thereof."

Jan'y 20, 1848.—On motion of S. Hood, esq., attorney for garnishees, rule on plaintiff to show cause of action, and why the attachment should not be dissolved.

Jan'y 20, 1848. Affidavits of cause of action filed.
" " " Petition for order of sale filed.
" 22, " On motion of E. Waln, esq., and affidavit filed, rule to show cause why an order of sale should not be made.

Jan'y 24, 1848.—On motion of S. Hood, esq., rule to show cause why the barque "Royal Saxon" should not be discharged from the custody of the sheriff under the writ of foreign attachment in above case.

Jan'y 29, '48.—Rule discharged.
" " " Rule for order of sale absolute, and order made for the sale of the barque "Royal Saxon" by the sheriff, at public outcry, on Wednesday, 9th Feb'y, 1848.

Jan'y 31, 1848.—Order of sale exhibit.

Feb'y 9, –'48.—Mr. Hood moves to rescind the order of sale of the "Royal Saxon." Motion denied.

Jan'y 4, '49.—Narr. filed.
" " Plaintiff by attorney, by writing filed, enters a rule of reference; arbitrators to be chosen on the twenty-fourth day of January, 1849, at 9 o'clock.

I certify the above and foregoing to be a true, full and accurate copy of the whole record, docket-entries and proceedings in the above case, as full and entire as the same remains of record in my office.

[L. S.] In testimony whereof, I have hereunto set my hands and affixed the seal of the said supreme court at Philadelphia, this eighth day of February, A. D. one thousand eight hundred and fifty-four.

RO. TYLER, *Pro.*

In the Supreme Court—March Term, 1848.

WARD & COMPANY vs. ROBERT TAYLOR. } No. 92.

Deposition of William M. Evarts, esq., a going witness, taken on part of plaintiffs, in pursuance of a rule of court, before Thomas D. Smith, commissioner, on the 4th day of December, 1852, at 3 o'clock p. m.; W. H. Drayton, esq., attending as counsel for plaintiffs, and S. Hood, esq., counsel for defendant.

William M. Evarts, esq., being duly sworn, says: I reside in the city of New York; I am 34 years old; and I am a member of the bar

of the city of New York. I intend returning home this evening; I know the plaintiffs, Ward & Co., of the city of New York; William G. Ward, one of the plaintiffs, is now deceased; he died since this suit was brought; the defendant I have seen, but have no personal acquaintance with. I was in Philadelphia about the early part of February, 1848; I came here to attend the sale of the "Royal Saxon," under proceedings in the State court here. I attended the sale here on the 9th February, 1848, at the Philadelphia Exchange, and purchased the "Royal Saxon" for Ward & Co., of New York, at the sheriff's public sale, for the sum of $2,800, which sum I paid to the sheriff, and I obtained from him a formal bill of sale to Ward & Co., in their individual names, which I took back with me to New York and delivered to Ward & Co. After the sale, I gave directions to keep in possession of the barque Royal Saxon for Ward & Co., the same ship-keeper or person who had held possession under the sheriff; that is all of that transaction. I came on again to Philadelphia on the 14th February, 1848, to attend a sale of the same barque, by the U. S. marshal of this district, which took place on the 15th February on board the barque itself, at a wharf on the Delaware, in this city. That sale I attended at 10 o'clock on the 15th February, 1848, going on board the vessel with Wm. W. Haly, esq., of Philadelphia, who was the counsel of Ward & Company in Philadelphia. We were both there before the sale commenced, and by permission of the marshal before he commenced crying the sale, we gave notice that the vessel was owned by Ward & Company, of New York, and in their possession, and that they would claim to hold notwithstanding the marshal's sale. The man whom I have spoken of before as the one concerning whom directions had been given by me, was then on board the vessel and in possession for Ward & Company. The sale was then held by the marshal, and I believe the barque was purchased by Mr. Taylor. I returned to New York, I presume that same day, leaving matters in charge of Mr. Haly, who was counsel for Ward & Company here. Mr. Haly is now deceased. There was no notice given at the sheriff's sale by any adverse party of any claim. I have no impression or recollection that any adverse notice was given at the sheriff's sale; but until this question was now asked me, I had not thought since of the sale whether such a notice was or was not given. I was present during the whole time of the sheriff's sale. I have no recollection or impression that anything was said about mariners' claims against the vessel, but there may have been; the only impression on my mind is the absence of any such affirmative recollection. The marshal was not present, to my knowledge, at the sheriff's sale; I was first introduced to the marshal at his own sale, which, I think, was the first time I saw him. To the best of my recollection, neither the marshal nor any one representing him objected to the sheriff's sale. I know nothing further of the matter, but that in the distribution of the proceeds of the sheriff's sale I was here in Philadelphia in reference to the matter; and Mr. Hood, as counsel for some parties claiming to be interested in those

proceeds, received a part of them; this, however, I suppose the records will show for whom he acted; that he received a part of it I know, independent of the record.

Cross-examined by Mr. Hood.

Question.—Do you recollect an offer being made to read a notice at the sheriff's sale at the Exchange, and that the sheriff refused to permit it?

Answer.—Something of the kind may have occurred, but I cannot say that I recollect that it did.

I do not recollect seeing the marshal's handbill or advertisement of the sale of this vessel, at the time I attended the sheriff's sale at the Exchange, either at or before the sale. I knew before I came on from New York that there were claims against the vessel for mariners' wages; I knew that claims were alleged; I knew nothing of their validity, and I have no doubt that the existence of these alleged claims was spoken of to me in Philadelphia before the sheriff's sale. I do not know that Mr. Hood received any part of the fund arising from the sale, as representing Mr. Taylor. I was here at the time the adjustment was made of this payment out of court of the proceeds; part was received by still other claimants. The man who had charge of the vessel for the sheriff called on me at the hotel after the sheriff's sale, and I gave him a memorandum to Mr. Haly for his employment to take charge of the vessel for Ward & Company. This is what I mean when I spoke of giving directions to take charge of the vessel. My verbal directions were probably to the man, that we should be glad to have him remain, and I wrote a memorandum in pencil to Mr. Haly, which I told him to take to Mr. Haly. I saw that memorandum in Mr. Drayton's possession to-day.

[Mr. Hood asks for its production.]

[Mr. Drayton says it shall be produced on the trial.]

I have an impression that the notice given at the marshal's sale, referred to before, was read from a written paper; and my impression is that the notice was given by myself, whether it was read or otherwise. If there was a paper, it was left with Mr. Haly.

WM. M. EVARTS.

Sworn and subscribed, Dec. 4th, 1852, before

THOMAS D. SMITH,
Commissioner.

Mr. Evarts of New York.—At Jones's Hotel.

This is the person who has charge of the Royal Saxon; perhaps you will want some one on board to look after your interest; he is a seaman and I can recommend him.

Respectfully yours,
HENRY LELAR.

[In pencil.]

Mr. Haley will please attend to this. I think we had better keep him aboard in possession for Ward & Co. until further directions.

WM. M. EVARTS.

WM. W. HALEY, esq.

Endorsed: (Paper A.) T. D. S., August 2, 1853.

WARD & Co.
vs.
ROBERT TAYLOR. } No. 42.

In the Supreme Court, March Term, 1848.

Deposition of Gabriel Johnson, taken on part of the plaintiffs in the above case, in pursuance of a rule of court, before Thomas D. Smith, Commissioner, on the second day of August, 1853, at 10 o'clock a. m. W. H. Drayton, esq., attending as counsel for plaintiffs, and Samuel Hood, esq., for defendant.

Gabriel Johnston, being duly sworn, says:

I am 61 years of age. I live below Kaign's Point, New Jersey, with my son. I formerly lived in Southwark. I have formerly been employed as a watchman, in taking charge of vessels, and I was often so employed by Henry Lelar, esq., when he was sheriff. I recollect being employed by him as watchman to take charge of the vessel called the Royal Saxon—that was about six years ago this coming fall. I was on board of that vessel when the marshal's officer came down there on board, and nailed the papers on the mast for the sale. I remember hearing of the sheriff's sale—and it may have been some three or four weeks after the sheriff's sale that the marshal's officer came down. After the sale by the sheriff, I was put on board as watchman for Ward & Co. The sheriff put me on board of the Royal Saxon as a watchman some time about six years ago this coming fall. I was on board when the marshal came there; this was after the sheriff's sale—the marshal came there and nailed the papers up for the sale. The marshal's lock was on the vessel when I was first placed there as watchman. *I saw the* marshal's officer there back and forward *every day* while I was there, from the time I was first placed on the vessel. *There was some difficulty about the passengers, as I heard*, and I saw some carpenters there measuring the vessel between decks. *I don't recollect who I heard say that there was a difficulty.*

The vessel was taken away from Spruce street wharf and placed at Shippen street wharf on account of lower wharfage—and when the ice began to run, the vessel was taken for better safety to Almond street wharf. I can't exactly say that the marshal's lock was on at Shippen street wharf, but I believe it was. Some time after, when the ice began to run, I think a little after Christmas, or about that time, the captain of the vessel said to me: "Watchman, you had better let the sheriff know the vessel is in a bad condition as to the ice, and it had better be removed to a safer place." I informed the sheriff, and he told me

to go down and look for a wharf where she would be safe. I did so, and selected Almond street wharf, and the captain took the vessel down there. The captain and crew were on board then. I don't recollect whether the marshal's lock was on when we left Shippen street. I know it was on when the vessel was at Spruce street, and I think it was on at one time while she lay at Shippen street wharf. I don't remember whether any marshal's officer was on board or not when the vessel was taken to Almond street. There may have been one, but I can't recollect. I remember an officer named Young, a marshal's officer, being twice with me; the last time he was at Almond street, and the first time I don't remember whether it was at Spruce street or Shippen street. I cannot say whether the marshal's officer was on board when the vessel was taken from Shippen to Almond street. While the vessel was at Shippen street, I used to see the marshal come there occasionally, the same as when the vessel was at Spruce street.

I don't remember that the marshal's officer interfered with the vessel after she got to Almond street, until I saw him nail the papers up for the sale. I recollect that before that, I used to see him come down there as usual, but whether he had any thing to do with the vessel I don't know. He never said any thing to me, and I never asked him any questions. When this paper was nailed up by the marshal, I was on board for Ward & Co.; I can't recollect how many weeks I was on board for them, whether it was two, three, or four weeks. After I heard the vessel was sold by the sheriff, I went to the sheriff to see him, to get my money; the sheriff told me he would not want my services any longer, but that perhaps Ward & Co. might want a watchman, and he gave me a note to a gentleman at Jones's Hotel, and I went there and saw the gentleman, and he gave me a note to Mr. Haley, and I went to Mr. Haley, and he told me to go down and take charge for Ward & Co., and stay there as watchman for their account until such time as I got further orders from Ward & Co. (The annexed paper, marked A, shown to witness, he says,) I think this looks like the note I got from sheriff Lelar, though I cannot read. It was immediately after the sheriff's sale, I went to the sheriff and got this note. I can't say whether it was the same day or next day after the sheriff's sale. I was not at the sheriff's sale, but was on board of the vessel. I was afterwards informed of the sale, and went to the sheriff to get my pay. He paid me for the time I was with him, and after that Mr. Haley paid me, for Ward & Co., a part of the time, and Mr. Lincoln paid me for the balance of the time, for Ward & Co.

When the vessel first went to Almond street wharf, the marshal's officer used to come down through the day. From the time I was placed on board by the sheriff, I was never ordered away by the marshal's officer.

On the morning of the day of the marshal's sale, and before the sale took place, two gentlemen came to me; I don't know who they were; one I think was Mr. Haley, and the other I think was the person who gave me the note at Jones's Hotel; one of them spoke to me and

said: "This vessel has to be sold over again, but that shall not interfere with you. You stay on board for us, that is for Ward & Co., and if any one orders you off, come up to Mr. Haley and he will send you down another watchman;" and a few days after the marshal's sale, I sent word up to Mr. Haley, and he sent down another watchman, and there was then two of us there.

On the day of the marshal's sale, I was on board as watchman for Ward & Co. I don't recollect that any marshal's officer was in charge. He was off and on; I can't say whether he was there or not; the papers were nailed on at the time. From the time Mr. Haley told me to go on board for Ward & Co., I remained on board for Ward & Co. until the captain came from New York and took her. I don't know the captain's name, nor who sent him. I think it was in June the captain came to take the vessel. I can't say who he took charge for; he did not tell me, and I did not ask him. While I was on board as watchman for the sheriff, and before the sheriff's sale took place, he discharged me twice, for a short time on each occasion. He said that the United States, or the marshal, had got the vessel, and that he did did not want me, but that perhaps he might want me in a few days; that was the first time I was discharged. I was sent for in a few days, and I can't recollect why it was I was discharged the second time. I was then away a few days when he sent for me again, and I then remained on board until I heard of the sheriff's sale. I can't recollect how long it was after I was put on board the third time, until I heard of the sheriff's sale. It may have been four weeks, or six weeks, or I think not less than two weeks. I was on board when the marshal came down to serve the writs for the sailors. There was two services—that is what I was told—I don't know who by, but by somebody on board; it may be by the captain or mate, or perhaps by the marshal. I can't recollect; the papers were nailed up. I was on board before that, and from that time until after the marshal's sale, and until the captain came and took the vessel away. I am old; my memory is bad, and this all happened six years ago. I did not fix the matter on my mind at the time, and only give my best recollection now, and I may have made some mistakes.

Cross-examined by Mr. Hood.

When I first went on board of the vessel at Spruce street wharf, the captain and crew were on board, and the marshal's lock was on the vessel. I don't recollect that any person took that lock off afterwards. The captain and crew were on board of the vessel from the time I first went there, down until after the marshal's sale; the captain and mate occupied the cabin, and the sailors were forward as they always do. During the time I was on board for the sheriff, or for Ward & Co., I never interfered with the captain or crew, nor they with me. The captain and mate sometimes asked me to come down in the cabin and warm myself. The marshal or his officers were in the habit of coming to the vessel, off and on, during the time I was on board. I cannot

recollect whether the marshal's lock was on or off during all the time I was there. I did not take notice of it. I recollect it being on at Spruce street, but I don't recollect it being put on at Shippen street; it may have been on; I don't know. I never took notice of it. The sailors were usually employed while I was on board, and were always doing something on the ship. The sailors helped in removing the vessel from Spruce street to Shippen street, and Almond street, and the captain and mate also assisted; the sailors were alway willing to do what the captain or mate ordered them. I recollect that after the marshal's sale, young Mr. Taylor and the marshal came on board the vessel, and had the American flag hoisted. Mr. Taylor requested me to leave the vessel. I told him I could not leave, that I was there on Ward and Co.'s account, and I could not leave without Ward & Co.'s orders.

During the time I was on board the vessel, I was there day and night. I don't recollect whether I went up or sent up to Mr. Haley's on the day I was requested to leave. I don't recollect whether it was the same day or the next day that I went to Mr. Haley's; but I did go to Mr. Haley's after I was requested to leave, and Mr. Haley sent me back again, and said he would send me another man down as an assistant, and he did so.

Re-examined.—When Mr. Taylor directed me to leave the vessel, I refused to go, and said I could not leave by his orders, nor by orders of any one but Ward & Co. They made no attempt to put me out of the vessel, no farther than talking. They did not take hold of me. Either that day or the next day I went to Mr. Haly's. When I went on board the vessel for the sheriff for the last time, she was at Almond street wharf, to the best of my recollection. I don't recollect that any marshal's officer was on board then, or not. He may have been, I don't recollect. I don't recollect whether there was a marshal's lock on or not at that time; there may have been.

his
GABRIEL ⋈ JOHNSON.
mark.

Sworn and subscribed before me, August 2d, 1853.

THOMAS D. SMITH,
Commissioner.

(E.)

WALL & AL.
v.
THE ROYAL SAXON.

Copy of Record in the District Court of the United States for Eastern District of Pennsylvania.—In Admiralty.

Pleas before the honorable the Judge of the District Court of the United States in and for the Eastern District of Pennsylvania.

It is thus contained: Be it remembered, that on the twenty-first day of January, A. D. 1848, Samuel Hood, esquire, one of the proctors of

said court, comes into the said court, and presents the libel and complaint of Thomas Wall, Archibald McIntire, James Kemmit, John McDaid, Thomas Wiggins, James Murphy, Neal Doherty, John Edwards, Joseph Parry, and Peter Henshaw, mariners of the British barque Royal Saxon, whereof James C. Ingleby now is master, against the said ship, her tackles, apparel, and furniture, and against all persons lawfully intervening for their interest therein in a cause of substraction of wages, civil and maritime; and thereupon the said libellants allege and articulately propound as follows:

I. That in the month of September, A. D. 1847, on the days of said month hereinafter respectively specified, the said barque Royal Saxon, whereof the said James C. Ingleby was master, being at the port of Londonderry, Ireland, and destined for a voyage from thence to Philadelphia, and, or to any other ports, places, to and fro, in the United States of North America, &c. &c., he the said James C. Ingleby, by himself or his agent, on the high seas and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court, did ship and hire the said libellants to serve as mariners on board the said barque for and during the said voyage, at the rates of wages per month respectively set forth in the schedule hereunto annexed, marked A, which schedule the said libellants pray may be considered a part of this libel. And that for the due performance of said voyage, the libellants respectively signed and duly executed certain articles of agreement commonly called shipping or mariners' articles, which now are in the possession of the said James C. Ingleby, master of the said barque, and which they pray may be produced for further certainty in the premises and for the benefit of the libellants. That in pursuance thereof, on or about the days respectively of their executing said articles, (which said days are set forth in schedule A, annexed hereto,) they the said libellants went on board and entered into the service of the said barque as such mariners as aforesaid.

II. That the said barque, having taken on board a number of passengers for the voyage proceeded therewith, and with the libellants on board, for the port of Philadelphia, and there safely arrived on or about the 27th day of October, A. D. 1847, and have continued on board the said barque, at the said port of Philadelphia, ever since, and have never been discharged from the same, but have always been ready and willing, and still are ready and willing, to perform every duty required of them by their respective stations on board the said barque.

III. That during the whole time they have been on board of the said barque, as aforesaid, they have well and truly performed their duties in their respective stations on board the said barque according to their best ability, and were obedient to all the lawful commands of the said master, and the other officers of the said barque, and well and truly deserved and are entitled to the wages in the schedule hereto annexed respectively.

IV. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court, in verifi-

cation whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the libellants pray that process in due form of law, according to the course of courts of admiralty, and of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said barque, her tackle, apparel, and furniture, wheresoever the same shall be found, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and to answer upon oath all and singular the matters so articulately propounded; and that this honorable court would be pleased to pronounce for the wages aforesaid, and for such other relief to the libellants as shall to law and justice appertain, and also to condemn the said barque, her tackle, apparel, and furniture, and the party intervening therefor in costs.

NEAL DOHERTY,
JOHN EDWARDS,
JOSEPH PARRY,
PETER HENSHAW,
THOMAS WALL,
ARCH. McINTYRE,
JAMES KEMMITT,
JOHN McDAID,
THOMAS WIGGINS,
his
JAMES ⋈ MURPHY.
mark.

JAS. L. TAYLOR, witness.

SAMUEL HOOD, *Proctor for Libellants.*

On this 21st day of January, A. D. 1848, personally appeared the above named ten (10) libellants, who being duly sworn, depose and say, that the facts set forth in the foregoing libel, so far as stated of their own knowledge, are true, and those facts derived from the knowledge of others they believe to be true.

Sworn before me, J. BURCHARD, *U. S. Com.*

(A.)

Names.	Time of entry.	Quality.	Wages per month.	Wages ear'd to 21 Jan., 1848.	Paym'ts by master.	Bal. Wages due 21 Jan. '48, stg.	Bal. Wages due 21 Jan. '48, in dols.
			stg.				
Thomas Wall....	1 Sept. 1847	1st Mate,	£6 06	£29 12 3	£12 12 0	£17 0 3	$85 00
Arch. McIntire..	10 " "	Carpenter	4 10	19 13 0	4 10 0	15 3 0	75 75
James Kemmitt..	1 " "	Steward,	3 10	16 9 0	3 10 0	12 19 0	64 75
John McDaid....	10 " "	Cook,	2 15	12 00 2	2 15 0	9 5 2	46 45
Thos. Wiggins..	10 " "	Seaman,	2 10	10 18 4	2 10 0	8 8 4	41 83
James Murphy..	10 " "	"	2 10	10 18 4	2 5 0	8 13 4	43 08
Neal Doherty....	11 " "	"	2 10	10 16 8	2 15 0	8 1 8	40 41
	Date of Indenture.						
John Edwards...	8 July, 1845	Appellee,			1 10 0	3 0 0	15 00
Joseph Parry....	8 " "	"			1 10 0	3 0 0	15 00
Peter Henshaw..	5 " "	"			1 10 0	3 0 0	15 00
				E. E.			

SAMUEL HOOD, *Proctor for Libellants.*

And thereupon it is ordered by the court that process of attachment do issue against the said barque Royal Saxon, according to the prayer of the said libel. Which said process being issued is in the words following, to wit:

UNITED STATES,
Eastern district of Pennsylvania, sct.

[L. S.] John K. Kane, Judge of the District Court of the United States in and for the eastern district of Pennsylvania.

To the Marshal of the same district, greeting:

You are hereby commanded, in the name and by the authority of the United States, forthwith to seize and attach the barque or vessel called the Royal Saxon, Ingleby, master, together with all and singular her tackle, apparel and furniture, as the same now are, and the same safely keep to abide the final order and decree of this court, in a certain plea, civil and maritime, herein prosecuted against the said barque, &c., by Thomas Wall, Archibald McIntire, James Kemmit, John McDaid, Thomas Wiggins, James Murphy, Neal Doherty, John Edwards, Joseph Parry and Peter Henshaw, late mariners of the said barque, libellants, for wages, &c. And you are further commanded, in the name and by the authority aforesaid, to cite and admonish the said master, and generally all others herein concerned, so that they be and appear before me at a special session of this court, to be holden at the room of the district court United States, in the city of Philadelphia, on the fourth day of February next, at 11 o'clock in the forenoon of the same day, then and there to show cause, if any they have, why the said barque, &c., should not be condemned, &c., for the payment of the said wages, &c.; and have you then there this writ.

Given under the seal of the said court at Philadelphia this twenty-first day of January, A. D. 1848, and in the seventy-second year of the independence of the United States.

THOMAS L. KANE,
Clerk dist. court U. S.

On which said fourth day of February, A. D. 1848, being the day of the return of the said writ, the said marshal makes return thereof in the words following, to wit:

"January 21, 1848. Attached the barque Royal Saxon, and found a sheriff's officer on board claiming to have her in custody."

So answers

GEORGE M. KEIM,
U. S. Marshal, E. D. of Pa.

Afterwards, to wit, on the twenty-fourth day of January, A. D. 1848, James H. Horn, esq., another of the proctors of the said court, comes into the said court and exhibits the answer of James Campbell Ingleby to the libel aforesaid, which being read and filed, is in the words following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania.

To the honorable John K. Kane, Judge of the District Court of the United States for the eastern district of Pennsylvania.

And now, James C. Ingleby, of Holywell, Flintshire, North Wales, intervening for his interest in the said barque Royal Saxon, and for the interest of the owner of the same, appears before this honorable court, and for answer to the libel and complaint of Thomas Wall, Archibald McIntire, James Kemmitt, John McDaid, Thomas Wiggins, James Murphy, Neal Doherty, John Edwards, Joseph Parry and Peter Henshaw, mariners of the said barque, against the said barque, and against all persons lawfully intervening for their interest therein, alleges and articulately propounds as follows:

I. That the respondent is now the master of the said barque, and was master as aforesaid during the times mentioned in the said libel; that the said barque is owned by Robert McIntire, of the city of Londonderry, Ireland, merchant. That the facts stated in the first article of the said libel are true, and that the wages claimed by the said libellants in the said article, and in schedule A, annexed to the said libel and referred to in said article, are justly and lawfully due, and the amounts claiming by the said libellants respectively as set out in the said schedule are correct; and according to the requisition of the said first article of the said libel, this respondent produces the shipping or mariners' articles called for therein.

Secondly. That the allegations made by the said libellants in the second, third and fourth articles of said libel he admits to be true.

Thirdly. Your respondent further saith, that he is not in funds from the owner to enable him to pay off the said mariners, or to liquidate the other necessary expenses of said barque, which your respondent offers as the reason why the said mariners have not been paid. And the said barque has been detained by a writ of foreign attachment, out of the supreme court of Pennsylvania, by virtue whereof she has been in the custody of the sheriff since about the fourth day of November, 1847, and your respondent has been and still is unable to procure the bail required thereby, viz: $20,000, and he could not discharge the said mariners in this port, the same being as regards the said barque a foreign port, without incurring severe penalties prescribed by the statutes of Great Britain in that case made and provided. That the said libellants are British subjects, and desire to be sent home at the expense of this deponent, or of the owner of the said barque, according to the rights secured to them by law.

Wherefore the respondent prays advisement, and that such decree and proceedings may be had in the premises as to law and justice may appertain.

JAMES CAMPBELL INGLEBY.
JAS. H. HORN,
Proctor for Respondents.

James Campbell Ingleby, the above named respondent, being sworn, says, that the facts set forth in the foregoing claim, as stated of his own knowledge, are true; and those derived from the knowledge of others he believes to be true.

Sworn to this 24th day of January, 1848, before
J. BURCHARD, *U. S. C.*

And thereupon the respondent, by his said proctor, enters rule to return process forthwith, sec. reg.

Afterwards, to wit, on the twenty-fifth day of January, A. D. 1848, the proctor for the said respondent presents to the court the petition of the said James C. Ingleby, which being read and filed is in the words following, to wit:

UNITED STATES OF AMERICA:

To the honorable John K. Kane, Judge of said court:

The petition of James C. Ingleby respectfully represents:

That he is master of the British barque "Royal Saxon," now lying at the port of Philadelphia, and whereof Robert McIntyre, of Londonderry, Ireland, is owner. That soon after the arrival of the said barque at the port aforesaid, to wit, about the 4th of November, A. D. 1847, a writ of foreign attachment, issued from the supreme court of Pennsylvania, of December term, 1847, (No. 49,) at the suit of James Magee and James Beazley, trading under the firm of James Magee & Co., against Robert McIntyre and William F. McIntyre, trading under the firm of Robert and William F. McIntyre, wherein your petitioner is summoned as garnishee. That by virtue of said writ of foreign attachment, the said barque was seized by the sheriff of the city and county of Philadelphia, and inasmuch as your petitioner was and is unable to procure bail in the amount demanded in said writ, to wit, the sum of twenty thousand dollars, the said barque has continued ever since in the custody of the sheriff. That the real claim in the said case is fifteen thousand dollars.

Your petitioners further saith, that on or about the eighteenth day of January, A. D. 1848, another writ of foreign attachment against the same defendants was issued from the said supreme court of Pennsylvania, of March term, A. D. 1848, No. 16, at the suit of Robert Bell. That your petitioner is summoned with Robert Taylor, as garnishees in this case, and the said barque also arrested by virtue of the last named writ, and bail demanded in the sum of twelve thousand dollars.

Your petitioner further saith, that on the twenty-first day of January, A. D. 1848, a libel was filed in this honorable court, by Thomas Wall and others, mariners of the said barque, for wages due them up to the 21st day of January, A. D. 1848, amounting in the aggregate to $442 33, the truth and correctness of which your petitioner cannot gainsay. That process has issued thereon, and the said barque been attached according to the course of admiralty courts, and is now in the custody of the marshal of the United States by virtue of said process.

Your petitioner further saith, that on the twenty-second day of January, A. D. 1848, and this libel was filed in this honorable court by Robert Taylor, consignee of the said barque, for advances made by him for necessaries on the credit of the same, amounting to the sum of nine hundred and ninety-three dollars, the truth and correctness whereof your petitioner cannot gainsay. That process has also issued on said libel, and the said barque has been attached by virtue thereof.

Your petitioner further saith, that he has himself made advances on the credit of the said barque and the owner, for mariners' wages and divers supplies necessary for the said barque, amounting to the sum of $462 05, and for the securing of the payment thereof he deemed it his duty to file a libel in this honorable court against the said barque, on which process has also issued and been served. That besides this, the wages of your petitioner, as master of the said barque, are greatly in arrear. That for the particulars of said several libels, your petitioner craves leave to refer to the same and the schedules thereto annexed, on file in the clerk's office of this honorable court.

Your petitioner further saith, that he is not in funds to meet any or all of the said claims and liens, and is advised and believes, that the claims contained in the said three libels so filed in this honorable court constitute a lien on the said barque. That the expenses of the said barque still continue, and are onerous, amounting in all to the sum of about $14 15 per day. That the said barque is in the mean time deprived of all opportunity to earn freight by being detained in custody as aforesaid. That your petitioner is unable to procure sureties in stipulations in the said cases, and he is advised that it may be several months before a final determination of the suits instituted by foreign attachment as aforesaid.

Your petitioner therefore prays that this honorable court will interfere for his relief and that of the owner, in the manner that may seem most effectual, by ordering the sale of the said barque, or otherwise, as to the court may seem just and right.

JAMES CAMPBELL INGLEBY.

HER BRITANNIC MAJESTY'S CONSULATE,
PHILADELPHIA, *January* 25, 1848.

Be it remembered, that the annexed petition of James C. Ingleby was presented to me this day, and that under the circumstances therein stated, I approve of the same, and deem the application contained in it to be necessary, and that the said Captain Ingleby, in making it, is fulfilling his duty to the owner of the barque Royal Saxon and to all parties interested in her.

WILLIAM PETER,
Her Britannic Majesty's Consul for the State of Pennsylvania.

Before me personally appeared, this 25th day of January, 1848, the above named James C. Ingleby, and of his solemn oath did depose and say, that the matters and things stated in his aforegoing petition are true,

of his own knowledge, except those therein alleged to be upon his belief and information by him received, and those matters and things he believes to be true.

Before J. C. INGLEBY,
THOMAS L. KANE,
U. S. Commissioner.

Whereupon afterwards, to wit, on the twenty-sixth day of January, A. D. 1848, the said petition being considered by the court, it is ordered, that the petition be referred to the clerk as commissioner, who is to report thereon for the information of the court, at the next ensuing special session.

On which said special session, being on the 28th day of January, A. D. 1848, the said commissioner makes and files his report in the words following, to wit:

"The report of the Commissioner under the order of the court made at its special session on the 26th day of January, 1848."

The commissioner having been attended at his sittings on the 25th and 27th days of January inst., by Samuel Hood, esquire, proctor for Thomas Wall and others, mariners, libellants in this court against the ship Royal Saxon.

James H. Horn, esquire, proctor for James C. Ingleby, respondent in this court to the libel of Thomas Wall and others.

Samuel Hood, esquire, who also appeared as proctor for Robert Taylor and James C. Ingleby, libellants severally of record in this court against the Royal Saxon.

Horatio Hubbell, esquire, proctor for John French, libellant in this court against the said ship.

James C. Ingleby, the petitioner in person, and by

Edward Waln, esquire, who intervened as attorney for certain creditors of Robert McIntyre and Wm. F. McIntyre, the alleged owners of the said ship.

And having examined the petition to him referred, and heard the allegations of the parties attending before him, and having moreover inspected the records, and otherwise by due and legal proofs verified the allegations of the petitioner, now reports to the court:

That the British ship, the Royal Saxon, was, on the 21st day of January instant, attached by the marshal of this district, by virtue of process of this honorable court, duly issued upon the libel and complaint of Thomas Waln, Archibald McIntire, James Kemmit, John McDaid, Thomas Wiggins, James Murphy, Neal Doherty, John Edwards, Joseph Parry, and Peter Henshaw, mariners, claiming liens on said ship for wages due to them, under a valid contract, for "a voyage from the port of Londonderry to Philadelphia, or to any other ports or places in the United states, to North America, South America, West Indies, or any other part of the world, at the option of the master, as freight or cargo may offer, for a term not to exceed twelve months, or until her return in the intermediate time to her ultimate port of discharge in the United Kingdom," which voyage has not yet ended.

That the said ship was also, on the 22d and 24th days of January next ensuing, attached by the said marshal on other process of this court, duly issued upon divers libels of complaint of John French, Robert Taylor, and James C. Ingleby, claiming liens on said ship for other wages, and for supplies and necessaries furnished, and advances made upon the credit of the same by the master and the consignee thereof. That the said ship, by virtue of the said attachments duly served, is now remaining in the legal custody of the marshal of this court. That certain writs of foreign attachment have moreover issued out of the supreme court of the State of Pennsylvania, to the terms of December, 1847, and March, 1848, at the suit of James Magee and James Beazley, trading under the firm of James Magee & Company, and Robert Bell, against Robert McIntyre and William F. McIntyre, trading under the name of Robert and William F. McIntyre, on which writs bail is demanded in the sums of $20,000 and $12,000 respectively; and that by virtue of the said writs last referred to, the said ship has been attached by the high sheriff of the city and county of Philadelphia, and that the said sheriff now claims to hold said ship in default of the bail demanded on said writs.

That the said ship is now lying at one of the wharves on the River Delaware, within the jurisdiction of this court, and that she is there incurring necessary expense, equal to the sum of sixteen $\frac{150}{100}$ dollars per day, and that she is suffering, and will continue to suffer deterioration and damage while she shall remain under detention.

Wherefore the petitioner, James Ingleby, having applied to the court for an order of sale of the said ship, and the consul of her Britannic majesty for the State of Pennsylvania, William Peter, esquire, having certified to this court, upon the face of the petition filed, that "under the circumstances therein stated he doth approve the same, and deem the application contained in it to be necessary, and that the said Captain Ingleby in making it is fufiling his duty to the owner of the barque Royal Saxon, and to all parties interested therein." And it appearing that the said ship is without cargo, and that there are no present means for effecting her release, whether by the discharge of the liens so claimed against her, or by stipulation, according to the rules and practice of the admiralty, the commissioner reports to the court here that the prayer of the petitioner is reasonable; and that it will be for the advantage of all parties, owners of, or interested in the said ship Royal Saxon, her tackle, apparel, and furniture, that an order for the sale of the same be presently made by this honorable court.

All of which is respectfully submitted.

THOMAS L. KANE,
Commissioner.

January 28, 1848.

Whereupon, afterwards, to wit, on the 4th day of February, A. D. 1848, it is ordered by the court that the said barque, "The Royal Saxon," her tackle, apparel, and furniture, be sold by the marshal of

the United States for the eastern district of Pennsylvania, to the highest and best bidder; the said marshal giving at least seven days' notice by handbills publicly posted, and by advertisement in daily newspapers, and in the Legal Intelligencer, a weekly paper, of the time and place of such sale, and that he bring the proceeds thereof into the registry of this court, to abide further order and decree.

And thereupon, to wit, on the same day, Mr. Waln moves for leave to intervene on behalf of the attaching creditors.

And now, to wit, on the same day, Samuel Hood, esquire, proctor for the said libellants, (the proctor for the said respondent being present in court and assenting thereto,) makes and files an amendment to the schedule annexed to the said libel, claiming on behalf of the said libellants two months' additional wages, from the 21st day of January, 1848, and is in the words and figures following:

Names of Libellants.	2 Mos. additional Wages.	Total.
Thomas Wall	$62 50	$147 56
Archibald McIntire	45 00	120 75
James Kemmit	35 00	99 75
John McDaid	27 50	73 95
Thomas Wiggins	25 00	66 83
James Murphy	25 00	68 08
Neal Doherty	25 00	65 41
John Edwards	10 00	25 00
Joseph Parry	10 00	25 00
Peter Henshaw	10 00	25 00

Writ of Sale.

UNITED STATES,
Eastern district of Pennsylvania.

John K. Kane, Judge of the District Court of the United States in and for the eastern district of Pennsylvania, to the Marshal of the same district, greeting:
[L. S.]

You are hereby commanded forthwith, in the name and by the authority of the U. States, to sell the British barque Royal Saxon, her tackle, apparel and furniture, to the highest and best bidder for the same, at public auction, giving at least seven days' notice by handbills properly posted, and by advertisement in daily newspapers, and in the Legal Intelligencer, a weekly paper, of the time and place of said sale, the said barque now being in your possession and custody, by virtue of a writ of attachment lately issued out of this court, at the suit of Thomas Wall and others, libellants, for wages, &c., and supplies, &c., and ordered to be sold as perishable property upon the petition of the master of said vessel, James C. Ingleby, which said petition was sanctioned and approved by her Britannic majesty's Consul, and the moneys arising from said sales you are to bring into this court, there to be and remain subject to the further order and decree thereof; and how you shall have executed this writ, do you make return to me on Friday, the eighteenth day of February instant, at 11 o'clock a. m., or on the next court day,

together with this writ. Given under my hand and the seal of the said court, at Philadelphia, this fourth day of February, A. D. 1848, and in the seventy-second year of the independence of the United States.

THOMAS L. KANE,
Clerk Dist. Court, U. S.

On which said eighteenth day of February, A. D. 1848, being the day of the return of the said writ, the said marshal makes return thereof in the words following, to wit:

To the honorable John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania.

I do certify, that in pursuance with the within writ, after giving at least seven days' notice by handbills publicly posted, and by advertisement in daily newspapers and in the Legal Intelligencer, a weekly paper, of the time and place of sale, I did, on the fifteenth day of February inst., at the first wharf below Almond street, in the county of Philadelphia, at 10 o'clock a. m., expose to public sale the barque Royal Saxon, her tackle, apparel and furniture, to the highest and best bidder, and sold the same to Robert Taylor, for the sum of sixteen hundred dollars; the sum in gross moneys arising from the said sale is herewith paid into court.

So answers

GEORGE M. KEIM,
U. S. Marshal, E. D. Pa.

Cost and charges to this date to be paid by and to U. S. marshal, viz:

			$23 70
Writ of sale,	$2 00	Auctioneer,	4 00
3 proclamations,	90	Wharfage from January 21st to date, 29 days at	29 00
Advertisements, papers and handbills,	16 80	29 days' custody,	43 50
Posting,	4 00		
	$23 70		$100 00
		Commissions on $1,600,	26 47
			$126 47

Whereupon, afterwards, to wit, on the twenty-second day of February, A. D., 1848, in open court of admiralty comes George M. Keim, esquire, marshal of the United States for the eastern district of Pennsylvania, and proclamation having been duly made according to the law and the custom of the admiralty, he the said marshal, in due form of law, acknowledged bill of sale of the said barque Royal Saxon, to Robert Taylor, as his act and deed. And thereupon, the said sale is approved and confirmed, and the said deed ordered to be made of record, and that possession be given to the said purchaser accordingly.

And now, to wit, on the seventh day of February, A. D. 1848, decree for the libellants, and it is referred to the

I. Clerk as commissioner, to ascertain and report amount of wages due to the said libellants, on the day when said libel was filed.

II. The amount reasonably sufficient to defray the cost of their passage home, and of their subsistence till such passage shall and may be obtained; and

III. The amount of one month's wages decreed to each of the mariners, libellants.

And the said commissioner, afterwards, to wit, on the eighth day of February, A. D. 1848, makes and files his report in the words following, to wit:

The report of the commissioner, to whom it was by order of court of February 7, 1847, referred to ascertain

I. The amount of wages actually due the libellants on the day when their libel was filed.

II. The amount reasonably sufficient to defray the cost of their passage home, and of their subsistence till such a passage shall or may be obtained; and,

III. The amount of one month's wages decreed to each of the mariners, libellants.

The commissioner was attended at his sittings by Samuel Hood, esquire, proctor for the libellants.

J. H. Horn, esq., proctor for James C. Ingleby, respondent in this case, and now or late master of the Royal Saxon, by the said James C. Ingleby, in person, and by William Peter, esquire, the consul of her Britannic majesty for the State of Pennsylvania.

And having heard the allegations and proofs of these parties, he reports:

I. That there was due to the libellants for wages, at the time of filing their libel in this case, to each the sums following, to wit:

	£	s.	d.		
To Thomas Wall - - - -	17	0	3	c. $4 84,	$82 34
Archibald McIntyre - - -	15	3	0		72 66
James Kemmitt - - - -	12	19	0		62 67
John McDaid - - - -	9	5	2		44 85
Thomas Higgins - - - -	8	8	4		40 74
James Murphy - - - -	8	18	4		41 87
Neal Doherty - - - -	8	1	8		39 12
John Edwards - - - -	3	0	0		14 52
Joseph Parry - - - -	3	0	0		14 52
Peter Henshaw - - - -	3	0	0		14 52

II. That a reasonable allowance for the subsistence and passage home of the libellants is as follows:

For board during detention at Philadelphia, of ten persons for one week, at $3 per week, each, - - - - -	$30 00
For passage-money of 15 persons, *a* $15 each, - -	150 00
For subsistence during passage home, estimated at 30 days, and 25cts. per diem, - - - - - - - -	75 00
In all - - - - - - -	$255 00

III. That the amount of one month's additional wages to each libellant is

	£ s. d. c. $4 84 pr.	£.
To Thomas Wall - - - -	6 6 0	$30 49
Archibald McIntyre - - -	4 10 0	21 78
James Kemmit - - - -	3 10 0	14 52
John McDaid - - - -	2 15 0	13 31
Thomas Wiggins - - -	2 10 0	12 10
James Murphy - - - -	2 5 0	10 89
Neal Doherty - - - -	2 10 0	12 10
John Edwards - - - -	15 0	3 63
Joseph Parry - - - -	15 0	3 63
Peter Henshaw - - - -	15 0	3 63

The three libellants last named, John Edwards, Jos. Parry and Peter Henshaw, are indented apprentices; for whom the sum of one month's wages would appear an imperfect measure of damages sustained from breach of the contract under which they were hired. All of which is respectfully submitted, this 8th day of February, in the year of our Lord 1848.

THOMAS L. KANE,
Commissioner.

Statement filed with Commissioner.

In pursuance of a decretal order, section 2, made this day by the court, the undersigned estimate the following as a reasonable allowance for the subsistence and passage home of the mate and mariners of the above barque, in consequence of their detention *of* Philadelphia:

9 seamen, *a* $3 per week each, - - - - - -	$27 00
1 mate, *a* $4, - - - - - - - - -	4 00
Passage home for 1 mate and 9 seamen, estimated at $15	150 00
Subsistence during the passage home, say 30 days, at 25c. per *week* each - - - - - - - - - -	75 00

Seen and approved by me,

WILLIAM PETER,
Her Britannic Majesty's Consul for the State of Pennsylvania.

February 7, 1848.

SAM'L HOOD,
Proctor for Libel.

Afterwards, to wit, on the 12th day of February, A. D. 1848, the said libellants except to the report of the said commissioner, "because only one week's boarding, viz., $30, is allowed them thereby, whereas they are entitled to have their boarding paid from the time of filing their libel, viz., 21st day of January, 1848, until payment of their wages and satisfaction of the decree of this honorable court;" which said exception is allowed, and the said report is amended by allowing $120 for board, instead of $30.

Whereupon, afterwards, to wit, on the first day of March, 1848, the said report is confirmed. And it appearing to the court that the decree in favor of the libellants is of privileged grade, and entitled to full satisfaction from the fund in the registry: It is ordered and decreed by the court that the amount thereof be paid and satisfied forthwith.

UNITED STATES,
Eastern District of Pennsylvania.

I certify the foregoing to be a true and faithful copy of the record and proceedings of the district court of the United States in and for the eastern district of Pennsylvania, in a certain plea, civil and maritime, therein lately depending, wherein Thomas Wall and others were libellants against the barque Royal Saxon, Ingleby, master and respondent.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia, this [L. S.] twenty-fourth day of December, A. D. 1852, and in the seventy-seventh year of the independence of the said United States.

THOMAS L. KANE,
Clerk Dist. Court U. S.

UNITED STATES,
Eastern District of Pennsylvania.

I certify the foregoing attestation to be in due form and by the proper officer.

J. K. KANE,
Pres. Judge, &c.

December 24, 1852.

UNITED STATES,
Eastern district of Pennsylvania.

I certify that the honorable John K. Kane, who has signed the foregoing certificate, was at the time of signing the same, and still is, judge of the district court of the United States, in and for the eastern district of Pennsylvania, duly commissioned and qualified.

Witness my hand and the seal of the said court, at Philadelphia, this [L. S.] twenty-fourth day of December, A. D. 1852, and in the seventy-seventh year of the independence of the said United States.

THOMAS L. KANE,
Clerk Dist. Court, U. S.

(F.)

UNITED STATES OF AMERICA, *to wit:*

In the District Court of the United States in and for the eastern district of Pennsylvania, in the Admiralty.

Bill of Sale.

To all to whom these presents shall come, I, George M. Keim, United States marshal for the eastern district of Pennsylvania, send

greeting: Whereas, by a certain admiralty writ or order of sale, issuing out of the district court of the United States, in and for the eastern district of Pennsylvania, sitting in admiralty, I was, by the honorable John K. Kane, judge of the said court, "commanded to sell the British barque, the Royal Saxon, her tackle, apparel and furniture, to the highest and best bidder for the same, at public auction, first giving at least seven days' notice, by handbills publicly posted, and by advertisements in daily newspapers, and in the Legal Intelligencer, a weekly paper, of the time and place of said sale; the said barque now being in your possession and custody by virtue of a writ of attachment lately issued out of this court at the suit of Thomas Wall and others, libellants, for wages, &c., and supplies, &c., and ordered to be sold as perishable property, upon the petition of the master of said vessel, James C. Ingleby, which said petition was sanctioned and approved by her Britannic majesty's consul, and the moneys arising from the said sale you are to bring into this court, there to be and remain subject to the further order and decree thereof, and how you shall have executed this writ, do you make return to me on Friday, the eighteenth day of February instant, at eleven o'clock a. m., or on the next court day, together with this writ;" which said barque is more fully and particularly described in the certificate of British registry, as follows, to wit: "No. eight, certificate of British registry. This is to certify, that in pursuance of an act passed in the eighth and ninth years in the reign of Queen Victoria, entitled 'An act for the registering of British vessels,' Robert M'Intire, of the city of Londonderry, merchant, having made and subscribed the declaration required by the said act, and having declared that he is sole owner (in the proportions specific on the back hereof) of the ship or vessel called 'the Royal Saxon,' of Londonderry, which is the burthen of four hundred and forty-two $\frac{85}{100}$ tons, and whereof James Campbell Ingleby is master, and that the said ship or vessel was built at St. John's, in the province of New Brunswick, in the year one thousand eight hundred and thirty-eight, as appears by a certificate of registry granted at Liverpool, 9th April, 1839, No. 68, now delivered up and cancelled property being charged, and R. Bedle, surveying officer at Liverpool, having certified to us, that the said vessel has two break-decks and three masts; that her length from the inner part of the main stern to the fore part of the stern-post aloft, is one hundred and eight feet seven-tenths; her breadth in midships is twenty-five feet four-tenths; her depth of hold in midships, nineteen feet one-tenth; that she is barque rigged, with a standing bowsprit, is square sterned, carved build, has no galleries, and a man's bust head; and the said subscribing owner having consented and agreed to the above description, and having caused sufficient security to be given as is required by the said act, the said ship or vessel, called 'the Royal Saxon,' has been duly registered at the port of Londonderry.

"Certified under our hands, at the custom-house in the said port of Londonderry, this third day of October, in the year one thousand eight hundred and forty-six. Signed, Wm. Shepherd, collector; J. Black,

comptroller." "United Kingdom, No. 264. Certificate of British registry, (parchment,) No. 2. New act." "Names of the several owners within mentioned.

ROBERT M'INTYRE.

"Number of sixty-fourth shares held by such owner: sixty-four. Signed, Wm. Shepherd, collector; J. Black, comptroller.

"Form of endorsement for changes of master:

"Custom-house. Dated

has now become master—

Collector. Comptroller.

"Endorsed, Royal Saxon, of Londonderry—442 tons. 3d October, 1846. No. 8.

"*Her Britannic Consulate in the United States of America:*

"I, William Peters, esquire, her Britannic majesty's consul for the State of Pennsylvania, &c., do hereby certify that the within is a true and perfect copy of the register of the barque 'Royal Saxon,' of Londonderry, Ireland, James C. Ingleby, master, now in my possession.

"In truth and testimony whereof, I, the said consul, have hereunto set my seal of office, at the city of Philadelphia, [CONSULAR SEAL.] this eighteenth day of February, in the year of our Lord one thousand eight hundred and forty-eight.

WILLIAM PETERS."

And whereas, in obedience to the command of said writ or order, I, the said marshal, having first given seven days' notice of the time and place of such sale to be by me made, by handbills publicly posted, and by advertisements in daily newspapers, and in the Legal Intelligencer, a weekly newspaper, did, on Tuesday, the fifteenth day of February, of the present year, at the first wharf below Almond street, in the county of Philadelphia, expose the said barque "Royal Saxon," together with all and singular her tackle, apparel, and furniture, to public sale, when Robert Taylor, of the city of Philadelphia, bought the same for the price or sum of sixteen hundred dollars, he being the highest and best bidder, and that being the highest and best price bidden for the same. Now know ye, that I, the said marshal, for and in consideration of the aforesaid sum of sixteen hundred dollars, to me in hand paid by the said Robert Taylor, of the city of Philadelphia, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and delivered, and by these presents, by virtue and in pursuance of the aforesaid recited writ, or order of sale, and the laws of the United States in such cases made and provided, do grant, bargain, sell, and deliver unto the said Robert Taylor the aforesaid barque or vessel called the "Royal Saxon," to have and to hold the said barque or vessel called the "Royal Saxon," together with all and singular her tackle, apparel, and furniture, and the appurtenances thereunto be-

longing, unto the said Robert Taylor, his executors, administrators, and assigns, to his proper use, benefit, and behoof, forever.

In witness whereof, I, the said marshal, have hereunto set my hand and seal, this eighteenth (18th) day of February, in the year of our Lord one thousand eight hundred and forty-eight, (1848,) and in the seventy-second year of the independence of the United States.

GEO. M. KEIM,

[SEAL.] *U. S. Marshal E. D. of Pennsylvania.*

Signed, sealed, and delivered in presence of—

J. BURCHARD,

CHAS. F. HEAZLITT.

Received on the day of the date of the aforegoing bill of sale, of the aforenamed Robert Taylor, the sum of sixteen hundred dollars, being the full amount of consideration money aforenamed.

GEO. M. KEIM,

U. S. Marshal E. D. of Pa.

Witnesses at signing—

J. BURCHARD,

CHAS. F. HEAZLITT.

And afterwards, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and forty-eight, to wit: at the county aforesaid, said marshal did appear in the said district court of the United States, in and for the eastern district of Pennsylvania, sitting in admiralty, and after due proclamation made according to the law and custom of the admiralty, did in due form of law acknowledge the said deed or bill of sale as his act and deed; and thereupon the same was, by the said court, approved, confirmed, and ordered to be made of record, and that possession of said barque, her tackle, apparel and furniture, should be delivered accordingly; and afterwards a certificate of the said act was duly endorsed on the said deed in the words and figures following, to wit:

And now, this twenty-second day of February, in the year of our Lord one thousand eight hundred and forty-eight, in open court of admiralty, comes George M. Keim, esq., the marshal of the United States for the eastern district of Pennsylvania, and proclamation having been duly made according to the law and custom of the admiralty, he, the said marshal, doth in due form of law acknowledge the within deed or bill of sale as his act and deed, and thereupon the same is by said court approved, confirmed, and ordered to be made of record, and that possession be delivered accordingly.

[SEAL.] J. K. KANE.

In testimony of all which, the seal of the said the district court of the United States, in and for the eastern district of Pennsylvania, sitting in admiralty, is hereunto affixed, this twenty-second day of February, A. D. 1848, and in the seventy-second year of the independence of the United States.

CHARLES F. HEAZLITT,

[SEAL.] *Pro. Clerk district court.*

(G.)

This is to certify that we, the undersigned, having been called upon by Robert Taylor, esq., to inspect and examine the barque Royal Saxon, now lying in the port of Philadelphia, with regard to her value as she now lies, do hereby certify that we did repair on board, examine, and inspect the said barque, and after mature deliberation, according to the best of our judgment, have come to the conclusion that providing she is entitled to all the privileges of an American vessel, that the said barque is worth eight thousand dollars.

F. S. NICKERSON,
SILAS PEDRICK.

Philadelphia, April 7th, 1848.

(H.)

Deposition of Robert Soutter, jr.

Robert Soutter, junior, of the city of New York, merchant, aged forty-two years, being produced, sworn, and examined on behalf of the plaintiffs, deposes as follows:

I know the defendant, Mr. Taylor, personally. I do not know the plaintiffs, or either of them, personally; but I know their house of Ward & Co., in the way of business.

I did have a transaction in May or June of the year 1848, with plaintiffs' house of Ward & Co., in relation to the barque Royal Saxon, which resulted in the purchase of that vessel from plaintiffs by my brother James T. Soutter, who then resided in New York, I residing in Philadelphia at that time.

I have some knowledge of the value of said barque (the Royal Saxon) in the year 1848; I acquired it by a personal examination of her at the time—she then lying in the harbor of Philadelphia. My general acquaintance with the value of vessels of that class was such as to enable me to judge of her value. I consider the fair value of her to have been four thousand dollars, which was the price paid for her upon the purchase by my brother; I mean the fair value as she then lay without register or sailing papers, she having been a foreign vessel and sold by the court of admiralty.

Had it been possible to procure an American register for her she would have been worth considerably more than I have stated; probably she would have sold for six thousand dollars.

Cross-examined.—My business and calling is that of a merchant.

My opinion of the value of the barque Royal Saxon is derived from my own observation and judgment, and not from the information or opinion of others.

(I.)

In the District Court of the United States in and for the eastern district of Pennsylvania.

THE UNITED STATES. } Pettit.
vs.
THE BARQUE ROYAL SAXON. } Hood.

Sur libel of information for bringing a greater number of passengers, &c.

1847, Nov. 11.—Information read and filed, and process awarded, and Friday, 3 December next, at 11 o'clock a. m., and the room of the district court, appointed for time and place of hearing.

17.—On motion of Mr. Hood for respondent—rule to take depositions on 24 hours' notice.

" —On motion of Mr. Pettit—rule to take depositions c. p. U. S. on 24 hours' notice.

18.—Answer of master filed.

20.—On motion of Mr. Pettit leave is granted to amend libel, and amendment filed.

" —On motion of Mr. Hood leave is granted to amend answer, and amendment is filed.

" —Agreement of counsel as to measurement filed.

30.—Depositions c. p. U. S. A. filed.

" —Depositions c. p. respondents filed.

Dec. 3.—Affidavit of C. F. Heazlitt filed.

" —Attachment returned "attached."

6.—Libel dismissed.

9.—The judge certifies probable cause for seizure, &c.

1848, Jan. 8.—Costs paid.

UNITED STATES OF AMERICA,
Eastern District Pennsylvania.

I, Thomas L. Kane, clerk of the district court of the United States in and for the eastern district of Pennsylvania, do certify the foregoing to be a true and faithful copy of the docket entries in the above entitled cause.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said court, at Philadelphia, this fifteenth day of February, A. D. 1854, and in the seventy-eighth year of the independence of the said United States.

[SEAL.]

THOMAS L. KANE,
Clerk Dist. U. S.

(K.)

Points on which the Judge is requested by Plaintiff to charge.

1. That the U. S. marshal cannot, in a proceeding for the recovery of sailors' wages, or for the claims of material, men, or of ship chandlers, take a vessel (or other chattel) out of the hands of the sheriff, who holds her under a writ of foreign attachment previously issued out of a State court.

2. That such possession can only be obtained by the marshal when such vessel is not delivered up to him voluntarily, by application to the court from which the foreign attachment issued, and under an order from that court to the sheriff to deliver.

3. That the marshal cannot hold jointly with the sheriff in such cases.

4. That the mere neglect on the part of the sheriff to turn the marshal, who subsequently come on board, out, is not an acquiescence in a joint holding.

5. That if the jury believe that the sheriff was in the actual possession of the Royal Saxon, before the issuing of the process to the marshal, and never gave up the possession to him until after she was sold to Ward & Co., that defendants have no title under their subsequent purchase from the marshal.

6. That an order of sale made by this court of a chattel in the hands of the sheriff as chargeable and perishable, is a proceeding in rem, and a good title against all the world passes under such sale.

7. That a sale made by the sheriff under such order, on the 9th Feb., 1848, was a sale of the vessel, and not of any particular individual's interest, and that under it a purchaser acquires a perfect title.

8. That a subsequent receipt of any portion of the purchase-money paid to the sheriff (by Messrs. Ward & Carryl) by the defendant here, was such an acquiescence in the validity of the sale as to preclude him from setting up any title acquired adversely to such sale, or from the allegation that such sale was void.

9. That when the Royal Saxon was sold under the order of this court, the proceeds paid into this court were liable to the claims of the sailors, and would have been distributed to them upon demand.

10. That as the records produced in evidence show the same counsel, who appeared and acted for Captain Ingleby and Mr. Taylor here, appeared and acted for Mr. Taylor and the mariners in the admiralty; the mariners had actual notice of the existence of this fund, and, if they did not choose to receive payment out of it, could not sell the vessel a second time to obtain payment.

11. That where a vessel has been taken in custody by the sheriff, under a foreign attachment from a State court, and he holds her under the same, and under proceedings instituted in and entertained by said court, for her sale as chargeable and perishable, the marshal, under an attachment of the district court of the United States, in a libel for seamen's wages, or other alleged liens, filed subsequent to such attachment and proceedings for sale, cannot lawfully take such vessel out of the hands of the sheriff.

(L.)

WARD vs. TAYLOR.

Defendant's counsel requests his honor the judge to charge the jury:

1. That by the maritime law mariners' wages have a priority over all other claims, and constitute a privileged lien upon the vessel in which they may have been earned, and that prior to any proceedings in the admiralty to enforce them.

2. That a principal end of the creation of admiralty courts, and that for which their powers, functions, and modes of proceeding are peculiarly adapted, is the protection of the rights of mariners, and the prompt administration of justice in cases where their claims are sought to be enforced by law; and that by its peculiar constitution a court of admiralty is more competent than a court of law to deal with cases where the claims of other creditors come in conflict with those of mariners.

3. That when the lien of a mariner for wages is sought to be enforced in the admiralty by libel, and the marshal has attached the vessel, under such proceedings the vessel so attached is in the exclusive custody of the admiralty until the claims of the libellants have been adjudicated, or the vessel released by order of the court on stipulation or otherwise; and such exclusive custody exists, notwithstanding a previous foreign attachment from a court of law served on the vessel by the sheriff.

4. That a foreign attachment (being only a proceeding to enforce the appearance of the defendant) only affects such interests in the thing attached, as belonged to defendant at the time of serving the attachment; and the jurisdiction of the court from which it issued is limited to the adjudication of the rights of plaintiff and defendant therein.

5. That a foreign attachment is not properly a proceeding in rem, but an attachment from the admiralty on a libel for mariners' wages is in rem, and the legal possession acquired by the sheriff on service of the writ of foreign attachment is ended, superseded or suspended by the service of such attachment from the admiralty.

6. That it was competent for the foreign attachment creditors here to intervene in the admiralty proceedings, and have their claims adjudicated therein, and have distribution made among them of the proceeds of the vessel according to the priority of their liens, after satisfaction of the privileged liens of the mariners.

7. That the foreign attachment creditors had notice of the proceedings against the vessel in the admiralty, and of the application for a sale by order of that court, and actually intervened and became parties to said proceedings before the sheriff's sale, and might have procured the order for that sale to be rescinded, and have come into the admiralty for their lawful share of the proceeds of the marshal's sale, if any should remain after satisfying privileged claims.

8. That when, on the 21st of January, 1848, the Royal Saxon was attached under the process issued on the libel for mariners' wages, she came by virtue of that attachment into the exclusive legal custody of the court of admiralty, and such exclusive legal custody continued from the 21st of January, 1848, until the sale by the marshal by order of that court on the 15th Feb., 1848.

9. That the legal possession of the vessel by the sheriff and his right of possession by virtue of the writs of foreign attachment were ended, superseded, or at least suspended, from the time when due service was made by the marshal of the writ of attachment from the admiralty on the 21st Jan'y, 1848; and that, whether his (the sheriff's) watchman were permitted to remain on board or not.

10. That the legal custody of the Royal Saxon being exclusively in the admiralty court, from the 21st January, 1848, until the sale made by order of that court, on the 15th February, 1848, the sale by the sheriff on the 9th February gave no title to the purchaser, as against the purchaser at the sale by the marshal.

11. When the vessel is attached by the marshal under process issued from the admiralty on a libel for mariners' wages, (a privileged lien,) and is sold under a decree of that court, such a sale passes a good title to the purchaser against all the world, no matter what sales, transfers, or assignments may have been made previous to such admiralty sale.

12. A sale by order of a common-law court, of a vessel as perishable, cannot affect any previous title, except that of parties or privies; and a sale in foreign attachment by such an interlocutory order confers no title but that of the defendant's, and does not divest the privileged liens of mariners.

WILLIAMS,
HOOD,
For Defendant.

(M.)

WARD & Co. v. TAYLOR. } Replevin.

Charge of the Court.

WOODWARD, J.—Gentlemen of the jury: This case involves a question of property. It is an action of replevin commenced in this court by Nathan T. Carryl, who survived William J. Ward, late co-partners, under the firm of Ward and company, against Robert Taylor, to recover a barque or vessel called the Royal Saxon, her boats, tackle, apparel, and furniture. In Pennsylvania, this action lies in all cases where one man claims goods or chattels in the possession of another, without regard to the manner in which the possession was obtained. It differs in some respects from all other actions. Generally, a plaintiff is not put in possession of the thing demanded, until after a decision is had in his favor; but in this action he may be, and frequently is, put in possession of the chattel in dispute by the sheriff, before any trial. The defend-

ant may retain the chattel, and substitute for it a claim property bond; but if such a bond, with satisfactory sureties, be not given, the sheriff takes the chattel out of his possession, and delivers it to the plaintiff. This was the course here. Taylor offered no bond, and the Royal Saxon was turned over by the sheriff to the plaintiff. But the defendant comes in and pleads "property" to the plaintiff's action—that is, he claims to have been the owner of the Royal Saxon, and that she should be restored to him, together with damages for her detention.

The plaintiff denies his claim, and thus they virtually change positions as plaintiffs and defendants, though in form they stand on the record as when suit was commenced. The vessel having been delivered to the plaintiff on the replevin, the verdict, if rendered for him, will be for such damages as he sustained by the defendant's detention of her up to the time of the execution of the writ of replevin. If rendered for the defendant, the verdict will be for a return of the vessel, and damages for the plaintiff's detention of her. The usual measure of damages in such cases is the interest on the value of the chattel. And though in circumstances of aggravation, juries are sometimes permitted to give damages beyond the interest on the value, yet in this case I instruct you there are no facts in proof which would justify a verdict beyond the ordinary measure.

From this brief statement of the nature of the action, and of the relation of the parties to the subject-matter in dispute, you will see that our duty is to test the titles of the respective parties to the Royal Saxon. Both parties claim under judicial sales—the plaintiff by virtue of a sheriff's sale, made in the course of proceedings in foreign attachment, had in the supreme court of Pennsylvania; the defendant, by virtue of a marshal's sale, made in pursuance of proceedings in admiralty in the district court of the United States for the eastern district of Pennsylvania.

Some few questions of fact, and various questions of law of considerable importance, grow out of these sales and the proceedings that led to them; and counsel having discussed them with great energy and ability, it becomes my duty to decide the questions of law, and to submit for your decision the questions of fact; and that we may proceed orderly and intelligibly through the mass of matter which has been placed before us, I propose to direct your attention—1st, to the title of the plaintiff, and 2d, to the title of the defendant.

I. As to the plaintiff's title.

In the month of September, 1847, Robert McIntire, of the city of Londonderry, Ireland, was the owner of the vessel. Some time in that month she sailed from that port with James C. Ingleby as her master, a crew of ten seamen, and laden with passengers, for the port of Philadelphia, where she arrived safely on or about the 27th of October, 1847.

On the 4th day of November, 1847, McGee & Co., as creditors of Robert McIntire and William F. McIntire, issued out of the supreme court their writ of foreign attachment against the McIntires, and on the 8th of November, 1847, the sheriff returned that he had attached the barque Royal Saxon, and summoned Capt. Ingleby as garnishee.

On the 15th January, 1848, on the petition of James McGee, one of the attachment creditors, the court granted a rule on the garnishee, to show cause why the vessel should not be sold as chargeable and perishable property.

18th January, 1848, Robert Bell issued out of this court his foreign attachment against Robert McIntire, attached the same vessel, and summoned Capt. Ingleby and Robert Taylor, this defendant, as garnishees, and on the 20th January applied for and obtained a similar order of sale.

24th January, 1848, the garnishees appearing by Mr. Hood, their counsel, obtained a rule on the plaintiffs in these attachments, to show cause why the Royal Saxon should not be discharged from the custody of the sheriff. The grounds of this motion will be stated hereafter. It is adverted to now not only to maintain the chronology of the proceedings, but because it may have some bearing on the question of possession, which you will have to pass on, and which, in due time, shall be fully developed.

29th January, this rule was discharged, and the rules for an order of sale in both the foreign attachments were made absolute.

31st January.—An order of sale issued to the sheriff in each case.

9th of February.—Mr. Hood moves to rescind the order of sale, and same day the motion denied.

21st February.—The sheriff returns the ship sold to Wm. J. Ward and Nathan T. Carryl, for $2,800.

Such is the derivation of the plaintiff's title.

The supreme court had jurisdiction in the premises, and the writs of foreign attachment were well issued and served. On the face of this record the plaintiff's title is regular and valid, and unless the defendant has made out a paramount right, the plaintiff's title must prevail.

Let us now trace the title of the defendant:

On the 21st day of January, 1848, the seamen on board the Royal Saxon filed their libel in the district court, sitting in admiralty, for the balances of wages due them respectively, up to that date, and praying for the process of the court, according to the course of courts of admiralty. Process, in the nature of an attachment, was thereupon awarded, to which the marshal on the same day made return in these words: "Attached the barque Royal Saxon, and found a sheriff's officer on board, claiming to have her in custody."

24th of January, 1848.—The answer of James C. Ingleby, master of said barque, was put in, admitting the wages claimed by the libellants.

25th January.—Captain Ingleby presented his petition to the district court, setting forth that the foreign attachments of McGee & Co., and of Robert Bell, had been laid upon the vessel; that she had been libelled by the seamen and by Robert Taylor, her consignee; that he had himself made large advances on the credit of the barque and her owner; that her daily expenses were about $14, and that she was deprived of all opportunity to earn freight, being detained in custody. The peti-

tion was referred to a commissioner, who reported on the 28th January the facts set out in the petition, and that she was suffering, and would continue to suffer deterioration and damage, and recommending that she be sold.

On the 4th February the court made an interlocutory order for the sale of the vessel as chargeable and perishable property;* and in pursuance thereof, the marshal, on the 15th of February, sold her at public sale to Robert Taylor for $1600, which he paid into court, and on the 22d February made and acknowledged his deed in due form to Mr. Taylor, and next day put him into possession of the vessel, from whom she was retaken by the present writ of replevin. Such is the title of the defendant.

It was upon the ground of these proceedings in admiralty that Mr. Hood moved the supreme court on the 24th January to discharge the vessel from the custody of the sheriff. The rule obtained was discharged, as we have seen, on the 29th January.

It is now insisted on behalf of the defendant, that the sheriff never obtained possession of the vessel under the foreign attachment, and that she was in the exclusive possession of the marshal from the time his attachment was laid.

The process of foreign attachment has for its objects:

1. To compel the appearance of a non-resident debtor to the action of his creditors.

2. To obtain satisfaction out of the property attached for the debt claimed.

It is called foreign attachment because it issues against a party foreign to our jurisdiction, and for the further purpose of distinguishing it from domestic attachment, the qualities and consequences of which process differ in many essential points from foreign attachment. It may go against specific property of the defendant, whether in the hands of any person or not, or it may be directed against goods and chattels, rights and credits generally of the non-resident debtor. In this last case, the writ is executed by the service of a copy on the person named as garnishee, with notice annexed by the officer, that by virtue of the writ he attaches all and singular the goods and chattels of the defendant in his hands or possession, and summons him as garnishee. Our act of assembly of 13th June, 1836, contains provisions in regard to attaching real estate which it is not necessary to bring to your notice.

But when the writ is directed against a specific chattel, it is the duty of the sheriff to take it into custody. If he finds anybody in possession, he summons him as garnishee—a name which indicates that he is warned that the property is in the custody of the law. The 50th section of the act of assembly just referred to, provides that "the goods and effects of the defendant in the attachment, in the hands of the garnishee, shall, after such service, be bound by such writ, and be in the officer's power, *and if susceptible of seizure, or manual occupation, the officer shall proceed to secure the same*," &c.

* Wall vs. The Royal Saxon, *ante*.

The sheriff was bound in this case to take the ship in custody. His return imports that he did; the motion of Mr. Hood on behalf of the garnishees on the 24th January assumed that it was in the custody of the sheriff; the return of the marshal to the attachment out of the district court asserts it; the petition of Capt. Ingleby re-asserts it, and Johnson, in his deposition, swears that the sheriff put him in charge of the vessel, and that he remained there until the sheriff's sale. That the marshal's lock may have remained on the vessel after the termination of the proceedings for the forfeiture, the record of which is in evidence, is quite probable. Mr. Waln, who was counsel for the creditors, explains that while that proceeding was pending on behalf of the Government, he was willing to withdraw the sheriff's officer to save expenses, but that he kept his eye on the proceeding, and before it was terminated ordered the man Johnson back into possession. If this question of possession had arisen on the proceedings for the forfeiture of the vessel, there might be some ground for alleging that, as against the Government, the sheriff had lost the possession. But the libel on behalf of the Government was dismissed on the 6th of December, so that no question is in dispute between the Government and the plaintiff; and as against the libellants of the 21st January, the evidence of possession in the sheriff is overwhelming. This question of possession, if question it can be called, is for the jury, but it is so fully proved by admissions from all sides, and by documentary as well as oral evidence, that no jury, and certainly not so intelligent a jury as I am now addressing, can be expected to hesitate or doubt about it.

If, then, the sheriff, under process that required him to take possession of the *thing* in controversy, did take it and keep it, how did the admiralty acquire jurisdiction over it? The proceedings in admiralty are said to be purely *in rem*. Let this be granted. But before effective proceedings *in rem* can be had, in any court, the thing must be brought within the control of the court—there must be custody. But the sheriff and the marshal could not both have the custody of the vessel, any more than two magnitudes can occupy the same space at the same instant. The presence of the marshal on the ship does not prove his custody, for the sheriff's officer was there before him, and in such a conflict the law adjudges him in possession who has the best right. The marshal did not dispossess nor attempt to dispossess the sheriff's officer, but prudently retired himself, and informed the court in his return that the vessel was in the custody of the sheriff. After that, the court of admiralty could not proceed a step in respect to that vessel whilst she remained in the custody of an independent and competent jurisdiction. In Hogan vs. Lucas, 10 Peters, where the same chattels were claimed in execution both by the marshal and the sheriff—by the marshal under common-law process from the district court of the United States, and by the sheriff under similar process from a State court—it was said by Justice McLean, delivering the opinion of the Supreme Court of the United States, " had the property remained in the possession of the sheriff, under the first levy, it is clear the marshal

could not have taken it in execution, for the property could not be subject to two jurisdictions at the same time. The first levy, whether it were made under the Federal or State authority, withdraws the property from the reach of the process of the other. The marshal or the sheriff, as the case may be, by a levy acquires a special property in the goods, and may maintain an action for them. But if the same goods may be taken in execution at the same time by the marshal and the sheriff, does this special property vest in the one or the other, or both of them? No such case can exist—*property once levied on remains in the custody of the law, and it is not liable to be taken by another execution in the hands of a different officer, and especially by an officer acting under a different jurisdiction.*" These are obvious and salutary principles, and well calculated to avoid unseemly conflicts between Federal and State authorities; but they do not apply here, say the defendant's counsel, for reasons which I proceed now to notice. I am called on to charge, that by the maritime law mariners' wages have a priority over all other claims, and constitute a privileged lien upon the vessel in which they have been earned, and when this lien is sought to be enforced in the admiralty by libel, and the marshal has attached the vessel, it is in the exclusive custody of the admiralty, and such exclusive custody exists, notwithstanding a previous foreign attachment from a court of law, served on the vessel by the sheriff. The 8th and 9th points re-assert this doctrine in regard to the possession, and declare that the marshal had the exclusive legal custody of the vessel, from the time he served his attachment till he sold her, and that the sheriff's possession was ended, superseded, or at least suspended.

If these positions are well taken and can be sustained, they throw the sheriff and the plaintiff's case overboard. Let us consider them.

Of the priority and the sacredness of the mariner's lien for wages there is no doubt. All the writers on maritime law assert it, and judges have tortured themselves to find language elevated and strong enough to describe it. What is said of it in Conkling's Admiralty Jurisdiction and Practice—that it is a sacred lien, and as long as a plank of the vessel or a fragment of the freight remains, the mariner is entitled to it in preference to all other persons, as a security for remuneration—is abundantly sustained by authority. But is it the law that a lien so universally acknowledged—so meritorious, and so paramount—must be asserted in a court of admiralty, and cannot be recognised in a court of common law? Nay, more—that a court of common law is so incompetent to provide for such a lien, that when in the very act of converting the vessel into money, for the benefit of all in interest, its process must be arrested midway, its officers displaced, and the vessel be surrendered to the admiralty?

The defendant's propositions involve an affirmative to these questions. The case of the Flora, in 1 Haggard's R. 298, does not sustain these propositions. The ship there had been levied in execution by the sheriff, who had her in custody when she was arrested on the admiralty process, but there seemed, says the reporter, to have been an under-

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standing that the vessel should remain in the actual custody and personal possession of the sheriff's officer; and from a foot-note we learn that the counsel of the execution creditor, fearing a commission in bankruptcy, which might cut out his execution, preferred a sale by the marshal instead of the sheriff. Under this permissive sale he claimed and recovered his client's money on the execution. There was no assertion of the sheriff's right to sell under the execution. It was yielded, for a reason that is specified; and how this case can be thought to sustain the principles contended for here, I confess myself unable to see.

The case of the Spartan, in Ware's R. 147, comes nearer to the point before us. The learned judge of the district court of Maine ruled that the lien of the mariners attached to the freight and cargo of the vessel, and that they were not prevented from proceeding in admiralty by previous attachments pending in the State court. But it is material to observe that we are not informed of the nature of these attachments, nor of the mode of executing them. If they required the sheriff to take the cargo into actual custody, and he had done so, the case would resemble the present. And then we should have expected some reason of a more general and conclusive character than that which was rendered for the ruling. The reason assigned was, that the mariner's lien was a privileged lien; but if, in Pennsylvania, such a lien can be recognised and satisfied in our State courts, we cannot be expected to feel the force that is claimed for the reasoning of Judge Ware.

If to these cases be added the opinion of the learned judge of the district court for the eastern district of Pennsylvania, we have the sum of the authorities relied on for the propositions of the defendant's counsel, for I lay out of view the dicta of Mr. Justice Story in the case in Sumner; dicta of a most learned judge, but whose well-known anxiety to enlarge the admiralty jurisdiction betrayed him into opinions which his brethren on the bench of the Supreme Court of the United States have not been willing to adopt and follow.

When claims, so much in derogation of the common law, and so subversive of the dignity of State tribunals, are set up in behalf of the admiralty, they ought to be well supported, both by reason and authority. We have seen how they stand on authority. Let us next see what reasons are urged in their support.

It is urged as a distinction of great importance, that the admiralty process is a proceeding *in rem*, whilst that by foreign attachment is not. Foreign attachment has frequently been said to be in the nature of a proceeding *in rem*. I refer to Phelps vs. Holker, 1 Dal. 264; Fitch vs. Ross, 4 S. &. R. 563; Kilborn vs. Woodworth, 5 Johnson, 37; Jackson vs. Bank United States, 10 Barr, 67; Christmas vs. Biddle, 1 H. 223; Gocheneur's Executors vs. Hostetter, 6 H. 418.

And when it goes against a specific chattel, of which the law requires, as I have shown, that the sheriff should take manual custody, it is strictly a proceeding *in rem*. True, it may be dissolved, and turned into mere personal process by the defendants appearing and entering

bail, but until this is done, and it was never done in the case before us, it does not lose its specific character. And the interlocutory order for the sale of the chattel attached as perishable, what is that but a proceeding *in rem*? In admiralty it is claimed and admitted to be *in rem*. But if such an order is *in rem* in one court, why is it not in the other? Some broader reason must be found for the alleged distinction, than the entitling of the process—a reason founded in the nature of legal principles is wanted—and none such have I seen or heard. Such a sale is not peculiar to the admiralty jurisdiction, but occurs in every court where perishable property is taken in *custodia legis*. It is a duty to sell it, to save it. It is to the interest of nobody that it should go to waste, or be permitted to consume itself in the cost of keeping. Sold for the benefit of all concerned, the price it brings is substituted for the thing itself, and whatever rights existed in the thing are recognised in respect to its equivalent. These are general principles, and I cannot doubt they were as applicable to the sale of the Royal Saxon made by the sheriff, as to that made by the marshal.

It may be added that foreign attachment, when proceeded in as this was, is much more an action *in rem* than replevin, which has not generally been considered an action *in rem*. Yet, Judge Grier, in the petitory suit of Taylor to recover possession of this ship against the plaintiff's replevin, reported in 1 Wallace, jr., 322, proceeds on the ground that replevin is an action *in rem*, and that the ship having been delivered to plaintiff by due process of law, the admiralty had no jurisdiction to restore her to Taylor. He held that the title of the parties must be tried in the State court. But, let it now be observed, if replevin out of a State court can deliver a chattel beyond the reach of the admiralty, much rather can foreign attachment, especially when attended with a sale of the chattel as perishable. Thus the authority of the district court on the question before us, highly respected as it is, is more than answered, is reversed by the circuit court. The *obiter dictum* of the latter as to Taylor's title is entitled to just that measure of respect which is due to what a distinguished judge says about a matter over which he solemnly decides he has no jurisdiction.

I feel authorized, in view of all that has been said, to decide that the foreign attachments laid, and the orders of sale made by the supreme court, were proceedings *in rem*, as truly, and in exactly the same sense, as the similar proceedings in admiralty are so denominated; and hence it follows, that, not the owner's interest in the vessel merely, but the vessel itself, was sold by the sheriff to the plaintiff in this action. And it follows also that the sheriff's possession up to the time of sale, if actually continued, was in law the exclusive possession, and that so far from the marshal having the exclusive possession, as I am called on to charge, he acquired no possession whatever, either in fact or law, until after the sheriff's sale. A consequence of this last conclusion is, that the admiralty proceeded without having acquired jurisdiction of the subject-matter, for the property could not be the subject of two jurisdictions at the same time.

And this leads me to say, that I cannot reconcile my mind to the idea, that under the Constitution and laws of the General Government, the admiralty can extinguish the jurisdiction of the State courts, by laying its hand on the subject-matter to which that jurisdiction has regularly attached. The States, and the people of the States, vested in the Federal judiciary jurisdiction "in all cases of admiralty and maritime jurisdiction;" and by the judiciary act, Congress provided the district courts for the exercise, in the first instance, of this jurisdiction. It is a civil law jurisdiction, the same, says Chancellor Kent, as the marine law of Europe, but it was never designed to come in conflict with the common-law jurisdiction, which all of the original States recognised and retained. In England, from which most of our legal principles have been derived, the admiralty had long been under curb by statute as well as judicial decision, at the adoption of our Federal Constitution, and I suppose it was that restrained jurisdiction which our fathers intended to grant in and by the Federal compact. If any man, lawyer or layman, has been misled by the extravagant doctrines advanced by the late Justice Story, in the case of De Lovio vs. Boit, 2 Gallison's R. 398; the opinions of Mr. Justice Johnson in Ramsay vs. Allegre, 12 Wheaton, 614, and of Justice Baldwin in the case of Bains vs. The Schooner James and Catharine, 1 Baldwin's R. 544, will be found excellent correctives.

Of one thing there is no doubt, that the trial by jury, the glory of the common law, but unknown to the civil, was prized by our sturdy ancestors above all price; and whoever undertakes to demonstrate that they introduced into our political system an element that was subversive of this great bulwark of liberty, an overshadowing power to blight the common-law jurisdiction of the country, with all its equitable principles and adaptive capacities, will find a work on hand that will demand all his diligence. Until this work be satisfactorily performed, I shall continue in the faith that the right of our courts to attach a vessel within our jurisdiction, by process of foreign attachment, and proceed in due course to sell her to the highest and best bidder, cannot be interrupted, after the custody of the vessel is obtained, by the exercise of any judicial power vested in the Federal Government. If proceedings in admiralty, at the instance of the Government, for violation of the navigation or passenger laws of the country, be an excepted case, it is an exception which pertains to sovereignty, and does not qualify the rule as it applies *inter partes*.

There is no principle better settled in our jurisprudence, not even the privileged lien of seamen for their wages, than that where there is concurrent jurisdiction, the tribunal which first obtains possession of the subject-matter shall be left to determine it conclusively. This principle is essential to the integrity of our system of government, and to the harmonious movements of its various parts. The judiciary of Pennsylvania has uniformly observed this principle with scrupulous delicacy, and we have a right to insist that it be respected by the federal

authorities. But, respected or not, it will be enforced on all proper occasions.

It is insisted, however, that this was not a case of concurrent jurisdiction. Unless the extravagant claims of the admiralty to override the State judiciary be admitted, the concurrence is beyond question. The creditors of McIntire had a right to attach the ship. The supreme court had jurisdiction. We proceeded *in rem*, and sold her. This divested all liens, for such is the effect of judicial sales in Pennsylvania. The mariners were then turned over to the fund. Of that the court had possession, and were competent to recognise the maritime principle which gave them a preference, and distribution *pro tanto* could have been made as soon as an audit had ascertained the amounts due them. Mariners are not compelled to seek their remedy in admiralty, by proceeding against the ship. They have a three-fold remedy—against the ship, against the master, and against the owner—to which must be added, according to Judge Ware in the case of the Spartan, against the freight and cargo also. They may proceed in admiralty *in rem*, or *in personam*, or in common-law courts in common-law forms. It is creditable to the humanity of the civilized world that their remedies are so various and ample; but it would be a disgrace put upon us as a State tribunal, if we could not administer any one of so multiform remedies. Suppose the estate of the owner, or the proceeds of the cargo to come into our court by process of law—what is to hinder our paying the liens of the mariners as well as of other creditors? The sheriff's sale, in this instance, was for all whom it might concern—for the mariner, the material man—the bottomry creditor—the owner—the attaching creditor, and for whomsoever had rights in the ship.

Then it was a proceeding strictly concurrent with that in the admiralty, and having first attached, all recognised principles, not only of comity and good manners, but of law, entitled this court to proceed and finish what it had fairly begun. The schedule filed with the libel of the mariners shows that the greater part of the wages claimed by them accrued while the vessel was lying in this port, and after the foreign attachments were laid. These surely could have been paid out of the fund in court as custody charges, just as Johnson, the sheriff's officer, was paid for his services. But as to all their wages, I hold the court was competent to ascertain and pay them without awaiting the final judgment in the foreign attachments. And from this it follows, that there is nothing in the argument drawn from the necessity for prompt and speedy redress to the mariner, for in this case they could have got their money sooner in the supreme court than they did get it in the admiralty. Ordinarily, however, I admit the admiralty is better calculated to redress the seamen speedily than common-law tribunals; but the interests of foreign commerce, unquestionably important as they are, must not be so magnified as to obscure other equal interests. American creditors have rights as well as foreign seamen, and the State courts have powers to preserve, which are anterior to any Federal tribunal, and which, having never been delegated by the people, are not

to be torn from us by judicial construction. The preservation of State authority, in its just rights, is a duty of paramount obligation. The welfare of the *whole people* depends on this, and no plea of inconvenience which may come from commerce, or any other quarter, should induce us to neglect it.

I have said judicial sales in Pennsylvania divest all liens. This is true of real estate, except in the case of such mortgages as are protected by statute, and such liens as do not admit of ascertainment in moneys numbered. But it is universally true of chattels. Where the proceeding is not *in rem*, the sale only divests the *title* of the defendant, but it transfers that unencumbered to the purchaser. Where the proceeding is *in rem*, it transfers the thing equally discharged from all liens. Such is the settled policy of our law, and it is a circumstance worthy of notice, that in the great case of the Corporation vs. Wallace, (3 Rawle,) where these principles were discussed very thoroughly, the court put this very case by way of illustration: "A ship," says Judge Huston, "may be mortgaged at sea, and all muniments of title fairly given to the mortgagee: on her return, she may, for other debts, be libelled in the admiralty, or, before the mortgagee can take possession, may be levied in execution. When sold, according to law, the prior lien takes the money, whether that lien is seamen's wages, a bottomry bond, or mortgage; and this, whether sold by order of the admiralty or on execution. I know of no case where once sold by process of a court having jurisdiction, she has again been sold by process of the same court, or any other court in the same country, for any debt of her former owner." This was said *arguendo*, and by way of illustration, it is true, but it was said by a judge of great experience and acute observation, and is entitled to respect as evidence of the law.

On the whole, I am of opinion that there is not adequate ground, either in the authorities or the reasons of the law, for the distinctions and claims which are set up here in behalf of the admiralty jurisdiction and process, and it results, of course, that if you find the sheriff maintained his first possession of the vessel until he sold her, the plaintiff acquired a perfect title by the sheriff's sale, and the defendant acquired none by the marshal's. If the sheriff had not the possession under his process, she was open to the process of the admiralty, and the defendant's title would be best; but on this question of possession, the evidence is so nearly conclusive that my mind cannot raise a doubt, and I have no expectation you will entertain any.

There are no equities in the case; each party stands on his legal title. There are circumstances in proof from which it is fair to presume that each had notice of the proceedings under which the other claims, and so had the creditors under whom the respective parties claim. The attachment creditors did intervene in the admiralty case, and the mariners might have intervened in the foreign attachments. But the titles of the parties before us are unaffected by these circumstances, and depend on the principles discussed, and the question of possession submitted to you. If the plaintiff receives your verdict it

should be for him generally, or, at most, with only nominal damages. The defendant's possession of the vessel was under color of title, and for so short a time, that I do not consider this a case for damages against him.

I have now, gentlemen, explained, if I have not justified, the views I entertain on the interesting questions which have been agitated in this cause. If any point on either side has not been substantially answered, in what has been said, it may be considered as ruled against the party propounding it.

In the Supreme Court for the eastern district of Pennsylvania.

WARD et al.
vs.
TAYLOR.

The defendants except to the charge of the learned judge:

1. Because he charged "that the presence of the marshal on the ship does not prove his custody, for the sheriff's officer was there before him."

2. Because he charged the jury "that the marshal did not dispossess nor attempt to dispossess the sheriff's officer, but prudently retired himself, and informed the court in his return that the vessel was in the custody of the sheriff; after that the court of admiralty could not proceed a step in respect to that vessel, whilst she remained in the custody of an independent and competent jurisdiction."

3. Because he charged the jury that the first levy, whether it were made under the State or the Federal judiciary, withdraws the property from the reach of the process of the other.

4. Because he charged the jury that a foreign attachment and the interlocutory order of sale were both proceedings *in rem* in the same sense in which that term is used with respect to admiralty proceedings, and as effective as a sale in admiralty.

5. Because he charged the jury that the opinion delivered by the judge of the United States district court in this case on the effect of the admiralty proceedings in this case was reversed by the judge of the circuit court, and that the *obiter dictum* of the latter, as to defendants' title, is entitled to just that measure of respect which is due to what a distinguished judge says about a matter over which he solemnly decides he has no jurisdiction.

6. Because he charged the jury that the foreign attachment laid and the orders of sale made by the supreme court were proceedings *in rem*, as truly and in exactly the same sense as the similar proceedings in admiralty are so denominated.

7. Because he charged the jury, that by his proceedings in this case the marshal acquired no possession whatever, either in fact or in law, until after the sheriff's sale.

8. Because he charged the jury that the admiralty proceeded in this case without having acquired jurisdiction of the subject-matter of the suit in that court.

9. Because he charged the jury that the courts of admiralty of the United States and the common-law courts of admiralty are courts of concurrent jurisdiction in proceedings *in rem* by sailors to recover their wages against the ship on board which they were earned.

10. Because he charged the jury that the sale under an interlocutory order of the supreme court of Pennsylvania divested the liens of mariners' wages, while proceedings *in rem* were then pending to recover them in a court of admiralty, and turned the mariners over to the fund produced by that sale.

11. Because he charged the jury that the proceeds of sale of the vessel could have been distributed among the lien creditors before the termination of the suit in the foreign attachment.

12. Because he charged the jury that if the sheriff first took possession of the vessel, and maintained it until he sold her, the plaintiff acquired a perfect title.

13. Because the judge refused to charge the jury, as requested by the defendants, in the points submitted to him.

14. Because he charged the jury against all the points of law submitted to him by the defendants.

15. Because he charged the jury in favor of the plaintiffs upon all the points of law submitted by them, except the eighth.

16. Because he charged the jury that the title of the defendants was invalid, and that of the plaintiffs to the vessel in question was unobjectionable.

17. Because he charged against the law of the case, and in favor of the plaintiffs.

Endorsed:—42, March, '48. Ward v. Taylor. Exceptions to the charge of the learned judge. Filed Feb. 23, 1854. Williams, Hood.

Whereupon afterwards, the said jury, upon their oaths and affirmations respectively, do say that they find for the said plaintiff, and assess the damages at six cents.

Whereby it is found that the said Nathan T. Carryl has sustained damages by reason of the premises, besides his costs and charges, by him about his suit in this behalf expended to six cents, and for those costs and charges six cents. Therefore, it is considered, that the said Nathan T. Carryl do recover against the said Robert Taylor his damages aforesaid to six cents, by the said verdict in form aforesaid found, and also twenty-one $\frac{37}{100}$ dollars to the said Nathan, at his request, for his costs and charges aforesaid by the court here of increase adjudged, which said damages on the whole amount to twenty-one $\frac{50}{100}$ dollars.

Afterwards, to wit, on the 8th day of April, A. D. 1854, at a session of the said court, held at the said county of Philadelphia, comes the said Robert Taylor, by Samuel Hood, his attorney; and on motion of the said attorney, an order was granted that the prothonotary certify the record and bills of exception in this case to the judges of the supreme court in banc, for a hearing at the next term thereof, on the said Robert Taylor complying with the provisions of the sixth section of the act of

26th July, A. D. 1842, entitled "An act to incorporate the Liberty Fire Company," &c. And afterwards, to wit, on the 13th day of April, A. D. 1854, in compliance with said provisions, the said Robert Taylor being duly sworn before the said prothonotary, deposeth and saith: That the order to certify the record and bills of exception in the above case is not sought by him the said defendant for the purpose of delay. And on the same day, he, the said Robert, gave absolute security with two sureties by recognizance, for the payment of all damages and costs, &c., in the words following, to wit:

In the Supreme Court of Pennsylvania for the eastern district.

NATHAN T. CARRYL, who survived William J. Ward, trading under the name of Ward and Company, pl'ffs,
vs.
ROBERT TAYLOR, defendant. } No. 42.

Sur Certificate to the Supreme Court in banc, of March Term, 1848.

We, Robert Taylor, the above named defendant, James L. Taylor, No. 32 Walnut street, merchant, and Hugh Cassidy, Carpenter street, below 3d, merchant, severally acknowledge to owe the above named plaintiffs the sum of two hundred dollars.

Whereas the above named defendant has obtained an order to certify the record, bill of exceptions, &c., to the supreme court in banc: now the condition is, that the above named defendant prosecute his certificate with effect, and if judgment be affirmed, or the certificate be discontinued or non-prossed, that he pay the debt, damages and costs adjudged or accruing upon such judgment, and all other damages and costs that may be awarded upon such writ of error, or else we will do it for him.

ROBERT TAYLOR,
JAMES L. TAYLOR,
HUGH CASSIDY.

Taken and acknowledged this thirteenth day of April, A. D. 1854.
J. NULLET,
For ROBT. TYLER, *Proth'y.*

And thereupon, to wit, on the same day, the said prothonotary certified the said record and bills of exception, to the said judges of the supreme court in banc, for a hearing at the next term thereof, according to the provisions of the said act of assembly of Pennsylvania.

And afterwards, to wit, on the 29th day of December, A. D. 1854, at a session of the said supreme court of Pennsylvania, held in banc at the said county of Philadelphia, came as well the said Nathan T. Carryl as the said Robert Taylor, by their attorneys; and the said Robert Taylor, by his attorneys, says, that in the record and proceedings aforesaid, and likewise in the rendition of the judgment aforesaid, there is manifest error, as by the said errors assigned in the said bills of

exception, as the same are fully set forth in the said exceptions to the charge to the jury, delivered by the learned judge who tried the cause as aforesaid, doth appear.

And thereupon the said Nathan T. Carryl here into court comes and says, that there is no error, either in the record and proceedings aforesaid or in the rendition of the judgment aforesaid, and prays that the court now here may proceed to the examination, as well of the record and proceedings aforesaid as of the matters aforesaid, above for error assigned and set forth as aforesaid, and that the judgment aforesaid may in all things be affirmed.

Whereupon, afterwards, to wit, on the 25th day of March, A. D. 1855, as well the records and proceedings aforesaid, and the judgment on the same given in form aforesaid, as the said causes and matters by the said Robert Taylor above for error assigned and set forth, being seen, and by the said supreme court of Pennsylvania now here in banc fully understood and diligently examined; because it seems to the said court that the judgment aforesaid is in nothing vicious or defective, and there is no error in that record. It is considered that the judgment aforesaid be in all things affirmed and remain in its full force and effect, the said causes above for error assigned and set forth in anywise notwithstanding.

And it is further considered by the said court, that the said Nathan have his execution against the said Robert for the costs, charges and damages adjudged unto him as aforesaid, in the said judgment on the said verdict, and also the sum of seven $\frac{25}{100}$ dollars now here adjudged unto him the said Nathan, by the said supreme court of Pennsylvania, for his costs and charges, which he has sustained by reason of the delay of the execution of the judgment aforesaid, by the pretence of causing the said record and bills of exception to be certified to the judges of the supreme court in banc, for a hearing as aforesaid at the instance of the said Robert.

And in pronouncing the said judgment, the opinion of the supreme court of Pennsylvania aforesaid was then reduced to writing and filed of record in the said case, according to the act of assembly of the said commonwealth of Pennsylvania in that behalf made and provided, and the same remains of record in the said court in the words following, that is to say:

The opinion of the court was delivered by LOWRIE, J.

This is an action of replevin for the ship Royal Saxon. The plaintiff claims title under sheriff's sale in a foreign attachment procedure in the State court, and the defendant under a marshal's sale in an admiralty attachment procedure in the district court of the United States. The two proceedings were partly contemporaneous, but the attachment of the State court was first; and when the marshal executed his writ he returned that he had done so, and that he "found a sheriff's officer on board, claiming to have her in custody;" and the case shows that the officer continued in custody up to the time when the sheriff sold her by order of the State court.

These facts raise the question, what is the relative value of these two attachments?

It is admitted that there is no superiority of courts of admiralty over common-law courts, that entitles their process to any pre-eminence; yet there are thoughts underlying this admission, and appearing in the argument, that tend to shape and control its effect, and they need some notice.

It is no kind of evidence of their superiority that their seal is admitted everywhere in evidence; for so is that of a notary public. Neither in England nor here are the seals of other foreign courts so treated; yet both there and here the admiralty is an inferior court.

And there is no peculiarity in the principle that all the world are chargeable with notice of what is going on in the court of admiralty; for that is only an emphatic mode of stating the ordinary doctrine of *lis pendens*.

Nor is there any peculiarity in the fact that the admiralty process against ships is *in rem;* for almost all common-law courts have the same sort of process; in Ohio, a justice of the peace may issue it; and, in substance, the proceeding by a justice of the peace against a stray cow is exactly equivalent.—6 Watts, 492. It is no essential part of the form that *the thing* should be styled the deft.

The district court is not superior by reason of its being a federal court, except so far as it has the advantage of being part of a jurisdiction which, in its highest impersonations, has the power to declare the limits of its own authority.

It has a peculiar dignity when sitting as a prize court, and applying the great principles of international law; but as an instance court it is simply a court of common pleas and quarter sessions, with different forms, and with jurisdiction of a special class of cases; and, in the very nature of things, bound by the usages and statutes of the State where it sits, or by the statutes of the Union; for it can have no other law. Its creation is not the institution of new relations, duties, or obligations among citizens, but merely a provision for enforcing those already existing. Where admiralty laws exist, it may administer them; where they do not, it cannot. Like all other federal institutions, it must submit to have its jurisdiction strictly construed.

It is not superior as a court of equity is, because of a power to draw to itself all the litigation about a particular subject-matter, as being the only court where the claims of all can be adequately adjudicated; for it cannot, even incidentally, bring any other than admiralty claims within its jurisdiction.

It is merely a co-ordinate court, and its suitors must be content to have it governed by the principle, that among equal jurisdictions that is exclusive which is first attached.

This is an essential principle of government, and presents one aspect of the idea, that all the institutions and ordinances of the same government have a unity and consistency of purpose which demand that its functions and functionaries shall act freely and harmoniously as ele-

ments of the same system. This ideal unity does not, however, exist in practice in every, and scarcely in any, government; because of the fundamental difference in the principles that enter into the organization of its different departments. If they represent different interests there will be conflicts between them, because their principles are various.

Hence the jealousy that once existed in England, and in this country, between the courts of chancery and admiralty on the one hand, and the common-law courts on the other; the former representing and favoring the monarchical, and the latter the democratic element of government. This jealousy has subsided or died away under the general prevalence of the popular element in the organization and control of both; and these conflicts have resulted in advantage to the general welfare, as all such conflicts do, when they do not spread beyond the different departments of the government.

There is, practically, a similar element of discord in this country—in its federal and State judiciary department—arising out of the facts that their respective jurisdictions are not susceptible of perfectly defined limits, and that the sources of their authority are not identical. And, since it is not easily seen how there can be any constituted harmony between the two forms of administration, except so far as we can rely on the wisdom and unity of the federal judiciary, it becomes very obvious that we are not without danger of having the power of the State judiciary very seriously impaired, by a process similar to that by which the local courts of the Anglo-Saxons were absorbed by the courts of the Norman kings.

This evil was, in a measure, corrected in England by the gradual infusion of the popular and customary principles into the king's courts; but that would be no corrective here, if our American notions of the danger of any increase in the centralization of power are well founded. It is certainly a very prevalent sentiment, that our State courts are competent to settle all juridical questions that depend upon State laws; and that, even if they are not, it is best that they should try to do it, and that it is conducive to general intelligence and order that they should be allowed to do it as best they can.

It is supposed that very much of the energy of the people of this country arises from the fact that they all participate so largely and directly in the regulation of their own government; and it would be considered most disastrous if a majority of Americans, democratic though it might be, should govern the affairs of each State or township. Our feelings and our attention are most attracted by matters nearest home, and we can, of course, manage them better than even wiser people at a distance can do, except in those instances where our interest is too earnest for our judgment; and, if those instances be not numerous and important enough to form a class by themselves, they must take their chance of the errors and failings that belong to humanity.

Certainly there ought to be no encroachment of one department upon the province of another, founded upon the suspicion that one will do its duty less honestly or intelligently than the other. And the dan-

ger of encroachment is not avoided merely by the honesty and intelligence of those who are invested with official functions; for these qualities are necessary to see the right and understand the defects of others in administering it; and then a strong and earnest mind may mislead them into supplying those defects by encroachments which, by reason alone of their beneficial results, become dangerous precedents of unwarranted jurisdiction.

In the true idea of the American Union there are no discordant principles between federal and State institutions, though human imperfection may lead to discordant practice. It has done so in this case, and it becomes our duty to overcome the difficulty as intelligently and discreetly as we are able.

By the seizure, under the foreign attachment of the State court, this ship was placed in the custody of the law, which means nothing less than it was in the custody of the State of Pennsylvania, by its appropriate functionaries, for all the purposes of the process then commenced against it; and the master was garnisheed or warned to appear and defend her against the claim. Such is the law; such was the order of the writ, and such the act of the sheriff; and an arrest in admiralty is substantially the same. Whatever might be the final result of the process, it was a necessary part of it that the ship itself should be under the control of the court, and the seizure was at least as effective as one under an execution would have been.—10 Pet., 400.

When the marshal went to execute the writ of the district court, he found the ship in possession of the State authorities. This was a condition of affairs not provided for by this writ, and not feeling himself authorized to exclude the State officer, he simply attached the ship without interfering with the previous possession, and substantially reported the state of affairs in his return.

Let it be conceded that this was a sufficient seizure to invest the district court with any jurisdiction over the ship that could be taken by one court over a thing that is already under the control of another; it could not entitle the marshal to exclude the sheriff. One officer is not the superior of the other, and no sort of mere private claim could justify a regulation that would allow of such a collision of functions. Different arrests on capias or seizures on execution could not thus interfere, even if they were from supreme and subordinate courts. Injunctions and prohibitions interfere in no such form and with no such effect. Admit that there is more inherent efficacy in an arrest of a ship for mariners' wages than there is in our foreign attachment process; still it could not operate with all its ordinary efficacy after a prior seizure nnder the other writ, because the prior control must remain until the prior process should be terminated, and thus far at least the mariners' arrest must be subordinate.

But is the arrest for mariners' wages more efficacious? True, it is designed to enforce an earlier lien; but that would not prevent an information in the exchequer to obtain a condemnation for a breach of the revenue laws, nor a libel in admiralty for a maritime hypothecation;

and it could not prevent an absolute sale of the ship under such proceedings, even though founded on claims of inferior degree. Whether the inferior claim were in the exchequer or in admiralty, the sailors would have to follow their vessel there and make their claim. 9 Wheat. 400; 1 Rob. 178; 10 Mis. 527; 5 Blackf. 483. They could not disregard the process already commenced. Even Government cannot set up her superior claim for forfeiture after the ship has been sold under an order of the court for an inferior one. 3 Price, 97.

There is no peculiar sacredness in the character of such liens that can add to their efficacy. Like many other remedies and rules of admiralty, they began in usurpation, because in disregard of the common law, and have never had any other foundation than subsequent ratification, expressed by statute or implied from submission to them. In the time of Richard II, much of this usurpation was condemned by statute, just as at other times the usurpations of the kings were condemned by *magna charta*. What was left of it and has hitherto continued to be used in England is, of course, part of their law—its subsequent general use is a ratification that pardons the vice of its origin.

So far as we have adopted, by settled custom, this part of the English law, it is a special part of our common or customary law, and it is as legitimate as any other, but not superior. How far this adoption proceeded, came very naturally to be decided in the first instance by the admiralty courts, unless when our several legislatures declared it. We did not, as one people, adopt it; for at the time of its adoption we were seperate colonies. We did not so adopt it by creating federal courts of admiralty, for they were instituted merely to enforce it, that is, where it previously existed. And so far as the several States have adopted it, they have done it only as part of their customary law, and it must of course be open to alteration by them.

We never adopt it in relation to our inland navigation, except by using its light in framing some of our statutes. The rules by which admiralty interprets the relations and duties existing between individuals, can be nothing else than the contract of the parties or the law of some place where the relation or duty is alleged to have been created, and this law must vary in different states and countries. There is no uniformity in the law of mariners' wages. In France they stand number six among privileged debts or liens, without counting salvage, which is first of all; and the privilege does not continue beyond the completion of the next voyage, and is discharged by any judicial sale. Code de Com. 191—196; 3 Vincens Legisl. Com. 117. Pothier de Louage Mar. 55, 226—8. Our limitation of the lien would be very much the same, if the analogy of our statutes concerning liens on vessels is worth anything. Ware's Rep. 322.

If the principles which we have just expressed are not substantially correct, then certainly a channel is opened, through the province of the admiralty courts, by which we may enter upon the open sea of latitudinarian interpretation of federal jurisdiction, and by which many of our State institutions may be securely invaded.

We have said that this admiralty process derives no peculiar efficacy from the fact that it is *in rem*. Like other judicial proceedings, it is simply conclusive of the matters which it professes to determine. Thus it decides that a specific thing is liable to be sold for a certain debt. In this it does not substantially differ from a process to enforce a mortgage or a builder's lien, or from an action of partition, and very many other procedures. If the process served upon the defendant's property do not compel him to appear, the suit may still go on; and even herein our processes of sci. fa. on mortgages and judgments, and of summons in covenant on a perpetual rent, as well as our foreign and domestic attachments, are directly analogous. The peculiar style of the action is very convenient; but it is not intended or expected that the ship shall make any defence. Such suits generally proceed on the principle that there are some interests and duties to which parties ought to be prepared to attend by themselves or their agents, on a very summary kind of warning.

It is supposed that the foreign attachment, because it affected only the title of the defendant, could not affect the mariner's liens for wages. But a lien is not a title to a thing, but a right to present a claim against it and demand payment out of it; and a mariner's lien is such a right as can be asserted only by judicial process. It gives no right in the vessel until condemnation. Since, therefore, the defendant in the foreign attachment was the sole owner of it, that writ took the custody of the whole title, and then the mariners could not interfere with it, except by some direct application to the department of government which had it in charge, or to some superior one. The law could not take it for them into custody, for it had it already for another purpose, and therefore for all purposes to which any one might claim that it ought to be applied by the State.

Were, then, the mariners' liens gone by the operation of the foreign attachment? Certainly not; for the law does not apply its remedies so as to do wrong to any one. The foreign attachment was a conditional sequestration of the ship, and it might be released from the custody of the law, either by defeat of the action, or by bail or by payment of the debt, just as an arrest in admiralty might be. Such contingencies attend all such seizures.

In a harmonious system of government there can, therefore, be nothing to prevent a second judicial seizure of the same property, subject to the control already taken of it in a former case, even by a different tribunal. This is the constant practice in the service of foreign attachments and executions from the same court or from different courts, and it is most completely illustrated in the case of executions issued by different justices of the peace to different constables against the same defendant. In a very recent case at Pittsburgh, Harberson vs. McCartney, one constable attempted, by an early sale, to get ahead of a previous levy by another, on property not easily removable, and we corrected his haste and declared the second levy subordinate to the first.

When the different processes issue from different courts, the court by whose process the property is converted into money marshals the liens

according to their legal order and distributes it, whether they are liens at large or of record. This is the constant practice in relation to the liens of carriers, factors, consignees and landlords, and all others having the same right; for the law does not use its power to their disappointment. And this principle is a mere corollary of that which attributes to all judicial sales the effect of discharging all liens, and which was demonstrated by Chief Justice Gibson, 3 Rawle, 126. And there is no matter of courtesy in this, but of mere duty, on the part of those who have to administer a system that was intended to work harmoniously.

That maritime liens and the United States courts are a part of a more general system, does not hinder them from entering into this intended harmony—they are still part of our one system. A generous confidence and courtesy between different, even judicial, functionaries will not embarrass them in the performance of their respective duties, for certainly the forms of judicial procedure, like those of other business, are susceptible of some accommodation, and can be adapted under all circumstances to secure the end for which they are designed, and especially to the general frame of government of which they form a part. It is not at all strange for courts to exercise a very large discretion under extraordinary circumstances, for the purpose of giving their process an orderly, efficient, and equitable direction. Eden's Bankr. Law, 339; 1 Mason, 409. And when access to a common superior is difficult, there is room for consultation and concession, at least as to forms.

We discover nothing that need have prevented an arrangement in this case, by which either court might have sold the ship and paid the mariners, and the surplus would have remained in, or been ordered into the other, to answer the further demands against it there. It is very much to be regreted that this was not thought of by either court in the course of the cause. Since it was not done, we must now decide the rights that have arisen out of the conflicting practice.

We have said enough to show that the whole custody of the ship was in the State court, and that the mariners' liens would have been protected there had they been presented. The next question is, were the mariners under the necessity of presenting them in the State court in case it should go on to the sale of the ship under the foreign attachment process?

We have already indicated our opinion that they were; but there are further reasons for it. Our foreign attachment proceeding, and also our execution attachment, are as fully *in rem* as an attachment in admiralty, with this difference, that the former depends upon the allegation that the defendant has the title, while the latter is altogether irrespective of title, except so far as a rightful possession is necessary to a rightful use of the ship.

By our writ the ship or other thing is taken into the custody of the law, and he who has the possession is garnished to defend all the interests which the thing represents, and his relation to the property requires that he should defend them, or give notice to the owners to look

to their own interests. It is a part of the process that all claimants may intervene directly for themselves, either by a formal common law interpleader, or by an informal one. 1 Troub. and H. Prac., by Wharton, 370; 4 Rawle, 109; 2 Ib. 37; 4 Binn, 61; 9 Vin. Abr. 419, title Interpleader; Brooks Abr., same title; McMunn vs. Carothers, 9 Pa. Law Journal, 134.

And it seems to be really essential that this should be the effect of the process in its operation on personal property. The articles attached are often very numerous, and when sold are delivered to numerous people, and the process would do great wrong if it should leave the lien on the goods, while it is thus scattering them to the winds. If goods were thus sold, it must necessarily result in a great sacrifice of property. A lien on a ship's cargo or furniture would not be worth much after a sheriff's sale, and they would not sell for much under a a threat of an admiralty attachment.

No doubt the property might be of such a character—a ship, for instance—that it might well be sold subject to a lien; but to do so would seem to require a special order. Obviously these reasons do not apply to land attached, and there is no need of adjudicating upon its title. As in the case of an inquest of office for escheat or forfeiture, the principal fact only, and not the title, is in question. Yet the possession of land is taken under the writ of attachment, and the rents sequestered into court, and the decree of the court must be conclusive as to the title to them. And such is necessarily the case when a debt is attached, for the debtor is summoned as garnishee, and the judgment may be that he pay the whole debt to the plaintiff in the attachment, and not to his creditor. If the debt shall have been previously assigned to another person before it was attached, the assignee must, on notice from the garnishee, interplead and establish his prior right, or his title will be lost, (20 Johns. 229.) The note in 4 Cowen, 520, is relevant to several aspects of this case.

But there is another view of this foreign attachment proceeding that is quite as direct and conclusive. By the execution of the writ the State takes specific chattels into its possession for certain purposes. In our practice, this purpose cannot be reached in less than about nine months, and it is very apparent that this delay may be ruinous of many articles. The interest of all concerned in them is that they should be sold, and the State exercises her best discretion when she directs this to be done. This is the means adopted to protect the interest of all who have any title to the property or claim upon it, and their rights are transferred to the proceeds. Here again, if the sale should be of many articles, as it most frequently is, and if it should be made subject to all claims except the one intended to be satisfied by the suit, it is very apparent that those claims would be most effectually destroyed by a proceeding that is pretending to protect them.

In such a case the government acts for the benefit of all, and its sale confers an absolute title. The counsel have referred to authorities enough to sustain so plain a principle: Parker's Rep. 70; Plow. 465; 1 Freem.

185; 2 Keb. 381; 12 Co. 73; 1 Vent. 313; 2 Inst. 168; 4 Johns. 34; 5 Mason, 481. We may add that the power with which the law invests the master to hypothecate or sell all interests in both ship and cargo, in a case of necessity, is another expression of the same principle. 4 Com. Bench R. 149; 7 Mees. & W. 322; 1 Exch. Rep. 537; 3 B. & Ald. 237. The effect of such a sale on the mariners' liens is very clear. They were discharged from the ship and attached to the proceeds, and those they could not possibly reach without some application to the court that had the custody of them.

From all this it seems to follow, that the arrest for the sailors depended for its efficacy upon a contingency that never happened. The proceeding in the State court totally exhausted the subject-matter of their contingent seizure, and prevented it from ever reaching the district court. Its decree was therefore in relation to a subject over which it had no control, and was consequently void.

We may admit that a replevin suit would not prevent an attachment for a lien, because in replevin, as in ejectment, the title or possession alone is in controversy, and the question of lien is totally independent of it. Besides, in such a suit the property is never taken into the possession of the court, no more than a man is when he gives bail on a capias.

Possibly it might be said of a judgment in foreign attachment, that a sale under it, after the arrest for the sailors' wages, ought to have been made subject to them, especially if their amount were ascertained; but it would be impossible to expect a sale for the purpose of preserving the value of the thing to take this form.

To say that the sheriff's vendees might have intervened in the district court, is to assume that the proceeding in the State court had not passed the title to the thing which was in their custody, and which they had sold, and this begs the very question of the cause.

To say that the sheriff might, in case the district court had sold first, have applied there for the surplus, is certainly very proper, if it can possibly be admitted that the district court could unceremoniously take the ship out of the custody of the State court and sell it.

It is very true that the effect which we have felt bound to attribute to the foreign attachment proceeding, may sometimes cause delays in enforcing sailors' liens; but this cannot be avoided. There are very many other circumstances that may cause such delays. A seizure for a forfeiture or for a hypothecation may do so, and especially one for salvage.

The law is neither omnipotent nor omnipresent, at least in its judicial impersonations, and it does not intend that its favors even to sailors shall apply in all cases and under all circumstances. It is sufficient that they are favored by the general rule, and, like others, they must expect disappointments in exceptional cases.

Afterwards, to wit, on the 5th day of November, A. D. 1855, the aforesaid Robert Taylor, by his attorney, John Cadwalader, esquire, produced to the said the supreme court of Pennsylvania in the eastern district, the foregoing writ of the United States of America for the correcting of errors of and upon the premises, commanding the record